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LETTER

OF

LUCIUS LYON,

FRAMES 11 - 10-4-1834

TO THE

HONORABLE LEWIS WILLIAMS,

Chairman of the Committee on Territories,

RESPECTING THE

BOUNDARY LINE BETWEEN OHIO AND MICHIGAN;

ALSO,

THE REPORT OF SAID COMMITTEE

ON THE SUBJECT OF

ADMITTING MICHIGAN INTO THE UNION.

WASHINGTON:

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CENSUS—MICHIGAN AND ARKANSAS.

[To accompany bill H. R. No. 362.]

MARCH 11, 1834.

Mr. WILLIAMS, from the Committee on the Territories, made the following

REPORT :

The Committee on the Territories, to which the subject was referred, report :

That they have had under their consideration the subject of authorizing the people of the eastern division of the Territory of Michigan, and the people of the Territory of Arkansas, to form for themselves a constitution and State Government, and admitting them into the Union on a footing with the original States, and they have come to the conclusion that it is not expedient at this time to adopt the measure. The committee, however, think it proper to take a census of those Territories, and for that purpose herewith report a bill.

In connexion with the subject of admitting Michigan into the Union, the committee have examined the question of boundary between that Territory and the State of Ohio, and also the expediency of changing the boundary between Indiana and the Territory of Michigan.

On the first point, to wit, the question of boundary between Ohio and Michigan, the committee herewith report to the House written arguments, submitted to them by a member from the State of Ohio, and by the Delegate from the Territory of Michigan.

In reference to the whole subject of boundary between the Territory of Michigan and the abovementioned States, the committee think it unnecessary to adopt any additional legislation.

To the honorable Lewis Williams, chairman of the Committee on the Territories in the House of Representatives of the United States :

SIR: After struggling through many years of colonial dependence, and sharing largely the privations, dangers, and desolation, consequent upon the late war with Great Britain and her savage allies, the Territory of Michigan, on reaching, at last, a brighter period in her history and prospects, determined, in 1832, by the vote of a decided majority, to apply for admission into the Union on the same footing with the original States.

[Gales & Seaton, print.]

In pursuance of this decision of the people, the Legislative Council of the Territory, at their next succeeding session, memorialized Congress on the subject; and, in February last, a bill was reported, which it was hoped and expected would pass, authorizing the people, in the eastern division of said Territory, to form a constitution and State Government.

In 1830, when the census was taken, this part of Michigan contained only about thirty thousand inhabitants; but, within the last four years, its population, wealth, and resources have increased with almost unexampled rapidity; and, by the very lowest estimate of those having the best opportunities of judging correctly, it now contains a population of at least fifty thousand persons. Even within the last nine months, the increase of population, by emigration alone, has been more than ten thousand, as is proved by the sales of public lands to actual settlers. There has been paid into the Treasury, during the past season, from this part of said Territory, more than six hundred thousand dollars—an amount considerably greater, it is believed, than has been received, in the same time, from any State or Territory of the United States.

In relation to the justice, propriety, expediency, and even necessity of immediately organizing a State Government in the eastern division of the Territory of Michigan, there is, among our citizens, scarcely a difference of opinion. All are for it. The people of the whole Territory are almost unanimously in favor of the measure; and, knowing their views and feelings in this particular, I felt it my duty to embrace the first opportunity to bring the subject before Congress, and to endeavor to procure the enactment of a law for that purpose, as early in the session as possible.

The bill reported at the last session is such an one as will suit the circumstances of the Territory; and the only change I would propose to make in it is to allow a delegate, in the convention to form a constitution, for every seven hundred inhabitants, instead of every twelve hundred, as there provided. It fixes the boundaries of the proposed State so as to agree precisely with the boundaries of the Territory of Michigan, as organized and established by the act of Congress of January 11, 1805. So far as relates to the division line between the proposed State and the territory which will be left west of Lake Michigan, the boundary there fixed is undoubtedly the one that will suit the true interest of the people, on both sides of said line, better than any other. Running northwardly, as it does, through the centre of Lake Michigan, to its northern extremity, and thence due north to Lake Superior, it coincides, through its whole extent, with one of those boundaries fixed by nature, which, where they exist, should, in the division of States, always be regarded. The strait of Michilimackinac, being narrow, and settled as it is, and will be, by people of the same habits, feelings, and interests, cannot be regarded as a natural division.

The people there, insulated as they must always be, in relation to the settlements west and northwest of them, ought not to be separated by a boundary which will compel a part of them to go southward to Detroit, and a part westward to Green Bay or the Mississippi, to their respective seats of Government; and for this reason alone, even if there were no others, the western boundary of the State should be fixed as it was in the aforesaid act of 1805.

In relation to the southern boundary of the Territory and of the proposed State, there was, several years ago, some controversy. In the year 1820, two or three years after the survey of the northern boundary of the State of Ohio had been completed, under the express provision and authority of an act of Congress, that State, not content with the line as run, according to law, due east from the southern extreme of Lake Michigan, set up her claim to all our territory as far north as a line drawn from the southern extreme of said lake to the north cape of Maumee bay, a point at the head of Lake Erie, about eight miles north of the boundary which had been established. She, however, at that time, failed, even in the opinion of her own citizens, to make good her claim. Controlled by the power of public opinion and a sense of justice, she then acquiesced in the establishment of her northern boundary, agreeably to the survey that had been made by the United States; and the Territory of Michigan has, ever since, through a period of thirteen years, held peaceable and undisputed possession of, and jurisdiction over, the tract of country then claimed by Ohio. Nothing has since been heard of this claim, and when the ground on which it was made had been examined, and the ordinance of 1787, and the numerous acts of Congress in conformity therewith, taken into consideration, it might have been reasonably presumed that nothing would ever be heard of it again. Such, it is not improbable, would have been the case, had it not been supposed that, at the present time, the strong desire of the people of Michigan to enter the Union as an independent State would induce them to submit to almost any change of boundaries that political power might dictate, rather than be kept back.

Under the late census Ohio has received a numerous addition to her representation in Congress; and being so fortunate as to have one of her members, and also one of the members from Indiana, placed on the Committee on the Territories at this particular time, when Michigan is applying for admission into the Union, she is now encouraged to come forward and make a strong effort to revive and sustain a claim which for years past has been abandoned, or suffered to lie at rest. If the claim of Ohio is a just or legal one, and if Congress have power to decide upon it, why has it not been preferred and urged on the attention of Congress some two, four, six, eight, or ten years ago? Why is the present juncture selected as the proper time, above all others, for making this application, unless it be to compel us to abandon our rights, or suffer the penalty of delay in our admission into the Union? Let those answer these questions who can. I am aware that the reasons assigned for this movement, and for the refusal of the delegation from Ohio to leave the question open, to be decided fairly and according to the principles of law and equity, by some disinterested tribunal, at a time when such decision can have no bearing upon our admission into the Union, is, that the matter had better be settled *now* by Congress, in order to prevent all difficulty between the States of Ohio and Michigan in future. This, coupled with the fact that Ohio has been almost wholly silent on the subject for many years past, looks too much like a pretext, the effect of which is expected to be to secure her the votes of those who may be opposed to our admission, and who will support her claims as a means of delaying or defeating our application.

So far as Congress have any power to settle this question, it has been

settled already, and it is asserted, without the fear of contradiction, that every act of that body, from the ordinance of 1787 down to the present time, has been uniformly, and without any exception, in favor of the boundary, as at present established.

Let us see how they stand, and then say if this is not the fact.

The ordinance of 13th July, 1787, entitled "An ordinance for the government of the territory of the United States northwest of the river Ohio," after making various provisions, necessary and proper for the organization of a temporary Government over the said territory, contains the following declaration :

"It is hereby ordained and declared by the authority aforesaid, that the following articles shall be articles of compact between the original States and the people and States in the said territory, and forever remain unalterable, unless by common consent, to wit," &c. &c.

The articles to which this declaration alludes, are six in number, and secure to the people of said territory religious toleration, the benefits of the writ of *habeas corpus*, the trial by jury, and many other things near and dear to freemen.

The fifth article provides that the whole Northwestern Territory shall be laid off into States, agreeably to certain fixed and unchangeable boundaries therein named and described in the words following, to wit :

"ART. 5. There shall be formed, in the said territory, not less than three, nor more than five States ; and the boundaries of the States, as soon as Virginia shall alter her act of cession, and consent to the same, shall become fixed and established, as follows, to wit: The western State in the said territory shall be bounded by the Mississippi, the Ohio, and the Wabash rivers ; a direct line drawn from the Wabash and Post Vincent due north, to the territorial line between the United States and Canada, and by the said territorial line to the Lake of the Woods and Mississippi. The middle State shall be bounded by the said direct line ; the Wabash from Post Vincent to the Ohio ; by the Ohio ; by a direct line drawn due north from the mouth of the Great Miami to the said territorial line ; and by the said territorial line. The eastern State shall be bounded by the last mentioned direct line ; the Ohio ; Pennsylvania ; and the said territorial line : *Provided, however*, and it is further understood and declared, That the boundaries of these three States shall be subject so far to be altered, that, if Congress shall hereafter find it expedient, they shall have authority to form one or two States in that part of the said territory which lies north of an east and west line drawn through the southerly bend or extreme of Lake Michigan.

"And whenever any of the said States shall have 60,000 free inhabitants therein, such State shall be admitted, by its delegates, into the Congress of the United States on an equal footing with the original States in all respects whatever, and shall be at liberty to form a permanent constitution and State Government : *Provided*, The constitution and Government so to be formed shall be republican, and in conformity to the principles contained in these articles ; and, so far as it can be, consistent with the general interest of the confederacy, such admission shall be allowed at an earlier period, and when there may be a less number of free inhabitants in the State than 60,000."

As these provisions are all deeply interesting to us at the present time, I have copied the whole of the aforesaid fifth article *verbatim*. Fixing

unalterably, as it does, the boundaries of States, some of which are destined shortly to become among the most important on the globe, it cannot be too closely studied. There are strong and convincing reasons to believe, that, in some instances, in the legislation of Congress heretofore, its provisions have been too little understood, or too slightly regarded.

Of these, however, I shall have occasion to speak more fully in a subsequent part of this letter. At present it is sufficient to remark that all the legislation of Congress, so far as relates to the northern boundary of Ohio, has been perfectly in accordance with the provisions of this article of the ordinance.

It will be observed that by this article the whole Northwestern Territory is, in the first place, laid off into three great States, fronting on the Ohio river, and running back due north to the territorial line between the United States and Canada.

The boundaries of these States are so well defined, and so clearly described, that they cannot be mistaken. There is then a proviso inserted, giving power to Congress, in the event that they shall deem it expedient, to alter these boundaries so far, and no farther, as to form one or two States in that part of the aforesaid three States which lies north of an east and west line drawn through the southerly bend or extreme of Lake Michigan. This, when done, would only alter the north boundary of the three States first formed, so that, instead of the territorial line, or Canada line aforesaid, they would be bounded on the north by an east and west line running through a fixed and well known point. The other boundaries of those States would remain unaltered, and their north boundary, though changed, would still be as well defined and as clearly described as before.

Such, no doubt, was the intention of the framers of the ordinance, and, so far as relates to the northern boundary of Ohio, such has always been the intention of Congress, as will appear, first, by the act of April 30, 1802, entitled "An act to enable the people of the eastern division of the territory northwest of the river Ohio to form a constitution and State Government, and for the admission of such State into the Union on an equal footing with the original States, and for other purposes," the second section of which act is in the following words, viz. "*And be it further enacted, That the said State shall consist of all the territory included in the following boundaries, to wit: Bounded on the east by the Pennsylvania line; on the south by the Ohio river, to the mouth of the Great Miami river; on the west by a line drawn due north from the mouth of the Great Miami aforesaid; and on the north by an east and west line drawn through the southern extreme of Lake Michigan, running east after intersecting the due north line aforesaid, from the mouth of the Great Miami, until it shall intersect Lake Erie, or the territorial line, and thence with the same, through Lake Erie, to the Pennsylvania line aforesaid: Provided, That Congress shall be at liberty, at any time hereafter, either to attach all the territory lying east of the line to be drawn due north from the mouth of the Miami aforesaid to the territorial line, and north of an east and west line drawn through the southerly extreme of Lake Michigan, running east, as aforesaid, to Lake Erie, to the aforesaid State, or dispose of it otherwise, in conformity to the fifth article of compact between the original States and the people and States, to be formed in the territory northwest of the river Ohio.*"

In relation to this article, which is the only authority the people of Ohio

had for any act of theirs in forming a constitution and State Government, three or four things are especially to be observed and remembered :

1st. That it was the people within the limits here described, and only those people, who were authorized to form a constitution and State Government. The people beyond those limits, for instance, on the tract now claimed by Ohio, were not authorized to form a constitution, and could have no voice in the matter. It follows then, of course, that so far as the convention of Ohio attempted to include within the State any portion of country beyond the limits mentioned and described in the foregoing article, they transcended their powers, and their acts are unauthorized and void.

2d. It is to be observed that the northern limit of the State, as described in this article, is a line drawn east and west through the southern extreme of Lake Michigan, which east and west line is the very same that is described in the proviso of the fifth article of the ordinance of 1787 as the line north of which Congress may form one or two States. This is proof that Congress, on the admission of Ohio, construed the language of the proviso in the ordinance aforesaid, in relation to this line, according to the plain import and meaning of the words, and precisely as the people of Michigan construe it now.

3d. It is worthy of note, that Congress, at the time of the admission of Ohio into the Union, had not fully determined whether they would finally form more than three States in the Northwestern Territory, or not. For this reason, there was a proviso inserted in the aforesaid second article of the act of 30th April, 1802, authorizing Ohio to form a constitution, reserving to Congress the power, at any time thereafter, to attach to the State of Ohio all the remaining territory within the original limits of the most eastern of the three States first laid out in the Northwestern Territory, or to dispose of said remaining territory "*otherwise, in conformity to the fifth article of compact.*" Here is another distinct recognition of this east and west line as the southern boundary of the "one or two" States, which the ordinance of 1787 gives Congress authority to form in that part of the three first formed States lying north of this line. This proviso reserves to Congress the power either to attach *all* the territory described, north of this east and west line, to the State of Ohio, or dispose of it *otherwise*, in conformity to the fifth article of compact, thus plainly implying that a *part* could not be so disposed of. The word *all* seems expressly used here to prevent ambiguity or doubt as to the construction which Congress then gave to that part of the fifth article of the ordinance, which gives them authority to form more than three States in the Northwestern Territory.

Let us now see how Congress disposes of this authority. The act of 11th January, 1805, entitled "An act to divide the Indiana territory into two separate Governments," is next, in point of time, to the act providing for the admission of Ohio into the Union; and, if Congress had at any time granted Ohio, either positively or contingently, or consented to the grant of any portion of country north of an east and west line drawn from the southern extreme of Lake Michigan, we might here expect to find such grant or assent recognised. Such, however, is far from being the case. The first section of the act provides "that *ALL* that part of the Indiana territory which lies *north of a line drawn east from the southerly bend or extreme of Lake Michigan, until it shall intersect Lake Erie, and east of a line drawn from the said southerly bend, through the middle of said lake, to its northern extremity, and thence due north to the northern*

boundary of the United States, shall, for the purpose of temporary government, constitute a separate territory, and be called Michigan.

Here, nearly three years after the admission of Ohio into the Union, we see the southern boundary of Michigan fixed on the same east and west line which is defined to be the northern boundary of Ohio, in the act authorizing that State to form a constitution and State Government.

The second section of this act provides "that the inhabitants of said Territory shall be entitled to, and enjoy, all and singular the rights, privileges, and advantages, granted and secured to the people of the territory of the United States northwest of the river Ohio by the ordinance of 13th July, 1787."

One of these rights and privileges, and certainly a very important one, is the right of being "admitted into the Union on the same footing with the original States," whenever the Territory of Michigan may have 60,000 free inhabitants, and "as much earlier as can be consistent with the general interest of the confederacy." By this act Congress first declared their intention to use the power given them in the proviso of the fifth article of the ordinance of 1787; and, in virtue thereof, to form one or two States in that part of the Northwestern Territory which lies north of an east and west line drawn through the southern bend or extreme of Lake Michigan. It will be recollected that this authority was expressly given Congress in the aforesaid fifth article of the ordinance; it was distinctly recognised and provided for in the act authorizing Ohio to form a constitution and State Government; and by the act organizing the Territory of Michigan, with the right to come into the Union when she may have 60,000 free inhabitants, it was disposed of.

Congress then, by that act, exhausted the power given them, and from that very moment, if not from the date of the ordinance, the people of the Territory of Michigan, and indeed of all the country north of the east and west line drawn through the southern bend or extreme of Lake Michigan, acquired vested rights, which no acts of Congress, or of any power on earth, could take from them. In virtue of the power then acted on and exhausted, the provisions of the act organizing the Territory of Michigan, so far as relates to boundaries, are as irrevocable and of as much force and effect as if the words of said act had been recited verbatim in the ordinance itself.

I am aware that, for the purpose of weakening this argument, it has been, and will be said, by the delegation from Ohio, that the same provisions, in nearly the same words, were inserted in the act of 7th May, 1800, establishing the Territory of Indiana. This, however, can have no weight, when we consider that, so far as relates to boundaries, the provisions of that act were not in accordance with the provisions of the ordinance, and of course were null and void; while the provisions of the act organizing the Territory of Michigan, for the purpose of temporary government, with reference to its coming into the Union at some future time, were in the most perfect accordance with the provisions of the ordinance, as well in relation to boundaries as to every other particular.

Admit, however, that the act organizing the Territory of Michigan was not, in effect, a declaration, on the part of Congress, of a determination to form more than three States in the Northwestern Territory; admit that, notwithstanding the provisions of the second section, pointing to a State Government, the act was merely a temporary measure, and the formation of

more than three States in the Northwestern Territory was not then referred to or thought of, and still it can make no difference with the question at present under consideration. It will not be denied that Congress have, by numerous acts prior to the present time, declared, in effect, their determination *eventually* to form more than three States in the Northwestern Territory. If this be admitted, no matter when or where this decision of Congress was first made, it follows that, from *that* time, the territory which the ordinance provided might be formed into one or two States, had all the rights which were secured by said ordinance to either of the three States first formed. One of these rights, as has been before remarked, is the right of admission into the Union on the same footing with the original States in all respects whatever, whenever the said territory shall have 60,000 free inhabitants. This is a very important right, and one which necessarily and intimately involves with it the question of boundary.

What then must be thought of the statements of those who assert that Michigan has no rights, and that the question of boundary here under consideration is a question entirely between the General Government and the State of Ohio, and not between the State of Ohio and the Territory of Michigan? This is the position assumed by the delegation of Ohio in the outset, and on it they found all their argument. I beg leave to submit it to the committee, whether the assumption is not wholly erroneous, and whether, on the contrary, this question is not emphatically and solely a question between Ohio and Michigan, and one in which the General Government can have no interest or concern whatever, further than to exercise, as in duty bound, a guardian care over the rights and interests of the territory, until, under a different form of Government, the people there shall be able to protect and defend their own rights.

What possible difference can it make to the General Government whether the northern boundary of Ohio should strike Lake Erie at the north cape of Maumee bay, or at the point where the line was actually surveyed and established? The answer must be, it can make no difference whatever. The proceeds of the sales of public lands will still be paid into the United States Treasury, whether the land itself lie in Ohio or Michigan, and as certainly in the one case as in the other. Both Ohio and Michigan will be equally parts of the same General Government, and it needs nothing to prove that that Government can have no rights nor interests, as a party, against either of them. It is also certain that Ohio *has* rights involved in this question, and that she is a party deeply interested; and it is moreover certain that one party, with rights and interests, cannot exist without an opposite party with rights and interests also. As it is clear that the General Government can have no interest against Ohio in this question, where then can be her antagonist party? Who can have rights and interests opposed to those of Ohio? The answer must be, Michigan; Michigan alone can have such rights and interests, and the controversy is *really* and *truly* between Ohio and Michigan, and *not* between Ohio and the United States, as has been very erroneously stated to the committee.

It is conceded, most freely, that were it not for the provisions of the ordinance of 1787, the position assumed before the committee, by the gentleman from Ohio, (Mr. Vinton,) would be sustainable. Were it not for the rights there secured, the question of boundary, so far as it could be a question at all, would be between the State of Ohio and the General Go-

vernment. The Territory of Michigan could then have no more legal right to claim admission into the Union, according to the boundaries with which she was organized, than the Missouri Territory had, or than the Territory of Arkansas has now, or than any of the Territories which have at different times been organized south of the Ohio, and east of the Mississippi rivers. Those Territories, with but one exception, had not the right of admission into the Union, with any specified number of inhabitants; nor had they secured to them any fixed and permanent boundaries. They, therefore, on their several admissions into the Union, had no legal rights, either on account of boundaries or population; and this fact has probably contributed to produce a general impression, that all our Territories are similarly situated, and that all questions in relation to their admission into the Union, and in relation to the boundaries prescribed for them, are strictly *legislative* questions.

This impression, however, is widely incorrect in relation to all the States and Territories that have been formed in the territory northwest of the river Ohio. The people of every part of that territory had important rights guarantied to them by the ordinance of 1787—rights, both in reference to population and boundaries, of such a nature as to make all questions in relation to the latter **JUDICIAL QUESTIONS**, and questions which must be decided according to the laws and ordinances of Congress, and not as a mere matter of expediency.

To return from this digression. So far we see that Congress always understood the northern boundary of Ohio to be a line drawn due east from the southern extreme of Lake Michigan. The next law relative to this subject, is the act of Congress of the 20th May, 1812, entitled “An act to authorize the President of the United States to ascertain and designate certain boundaries,” and is in the following words, viz. “*Be it enacted*, That the surveyor general, under the direction of the President of the United States, be, and he is hereby, authorized and required (as soon as the consent of the Indians can be obtained) to cause to be surveyed, marked, and designated so much of the western and northern boundaries of the State of Ohio, which have not already been ascertained, as divides said State from the Territories of Indiana and Michigan, *agreeably* to the boundaries as established by the act entitled ‘An act to enable the people of the eastern division of the territory northwest of the river Ohio to form a constitution and State Government, and for the admission of such State into the Union on an equal footing with the original States. and for other purposes,’ passed April 30, 1802;” and cause to be made a plat or plan of so much of the boundary line as runs from the southerly extreme of Lake Michigan to Lake Erie, particularly noting the place where the said line intersects the margin of said lake, and to return the same, when made, to Congress.

It will be observed that the above act provides that the northern boundary line of Ohio “shall be surveyed, marked, and designated, agreeably to the boundaries established by the act of Congress authorizing Ohio to form a constitution and State Government,” and *not in conformity* to the proviso contained in the sixth section of the seventh article of the constitution of the State of Ohio. It will not be unimportant that this fact should be borne in mind.

The war of 1812, and the hostile feelings of the Indians on the north-western borders of Ohio, for some time afterward, delayed the survey and

establishment of the northern boundary of that State, as here provided for, until 1818, at which time the work was completed, and returns were made to Congress.

Thus we see that the whole legislation of Congress, from the ordinance of 1787 down to the present time, has uniformly, invariably, and explicitly, pointed to, and recognised, a line drawn due east from the most southern extreme of Lake Michigan, until it intersects Lake Erie, as the northern boundary of Ohio, or the boundary line between that State and the Territory of Michigan. In examining acts so clear, so positive, and so explicit as they are, it would be impossible to conceive what the ingenuity of man could devise as a reasonable foundation for the claim of Ohio to any portion of country north of the line here spoken of. The inquiry would be natural. On what can Ohio rest her claim? On what can she possibly place the least reliance? It is evident that no one, or even two acts of Congress, however clear and positive they may be in her favor, can outweigh so many acts, and so long a course of legislation. She must have something of greater weight to do this, something paramount to any act or acts of Congress whatever. What is it? Why, after all the reasoning which the delegation from Ohio have found it necessary to use, to place their claim in the strongest possible light; after the whole story has been told, and every thing admitted according to their statements, the *strong* position relied on to upset and render void all other legislation of Congress on this subject, is simply the *implied* assent of that body to an unauthorized act of the Ohio convention! Congress authorized the people of the Northwestern Territory, living within certain well defined boundaries, to form a constitution and State Government. The people living within those boundaries, in pursuance of this authority, assembled in convention, and formed a constitution, agreeably to the act giving them authority. The convention then added a clause, (not contemplated by the authority under which they acted,) providing that in a certain event, and "*with the assent of Congress,*" the State which they then represented should include a tract of country north of, and beyond, the limits mentioned in the law under which the convention acted. Congress, by the preamble to the act providing for the execution of the laws of the United States within said State, declared that the said State had formed a constitution and State Government, in pursuance of the act of Congress giving them authority to do so. No notice whatever being taken of the proviso in the constitution, (which *was not* in pursuance of the said act of Congress,) it is therefore contended that Congress assented to, and accepted of, said proviso, as well as of every other part of the constitution. This is a brief but fair and correct statement of the case; and strange as it may appear, so far as law is concerned, this is the ground, and the whole ground, on which Ohio rests her claim! Well may some of the delegation from that State strive, as they have done, to propagate the notion that this question of boundary between Ohio and Michigan is not a *judicial question*; that Michigan has no rights, and that Congress are wholly untrammelled by former legislation, and can now settle the matter as they choose; for unless some such loose notions can be set afloat, and taken advantage of, it will probably be found that the ground on which this claim stands is entirely too narrow, notwithstanding it was so boldly proclaimed to the committee, in the outset, that the claim of Ohio would be perfectly good in a court of strict law. This claim avowedly rests alone

on the implied assent of Congress to certain distinct propositions of the convention of the State of Ohio. The first question naturally occurring is, what reason is there to infer such assent? It cannot be inferred from the acceptance of the constitution of the State of Ohio, as a *whole*, because the only questions necessary for Congress to ask, in relation to that constitution, were, "is it republican?" Does it secure to the people of Ohio the political rights and privileges guarantied to them by the ordinance of Congress of the 13th July, 1787? These were the only qualifications required by said ordinance for the admission to the Union of any of the new States in the Northwestern Territory; and if these questions could be answered in the affirmative, Congress was not at liberty to refuse, and could not refuse, to accept the constitution of Ohio, even though it had contained a hundred propositions, which the convention had no authority from Congress to place there, and which, if they belonged any where, properly belonged to another place.

The fifth article of the ordinance of 1787, which has been before quoted, expressly says: "And whenever any of the said States shall have sixty thousand free inhabitants therein, such State shall be admitted, by its delegates, into the Congress of the United States on an equal footing with the original States in all respects whatever, and shall be at liberty to form a permanent constitution and State Government: *Provided*, The constitution and Government so to be formed *shall be republican*, and in conformity to the principles contained in these articles; and so far as it can be, consistent with the general interest of the confederacy, such admission shall be allowed at an *earlier period*, and when there may be a less number of free inhabitants than sixty thousand."

Congress having decided that the admission of Ohio into the Union was consistent with the general interest, passed a law, approved on the 30th day of April, 1802, fixing permanently the boundaries of the State, and authorizing the people living within those boundaries to form a constitution and State Government. Whenever, therefore, in pursuance of this law, the people of Ohio had formed a constitution, and that constitution had been examined, and found republican in its character, Congress could not refuse the State admission into the Union on the same footing with the original States, even though her constitution had contained any number of extravagant propositions, which it could never have been the intention of Congress to sanction. How then could such admission into the Union be construed to imply the assent of Congress to the proposition of the convention to change the boundaries of Ohio? These boundaries had been permanently fixed by the law of Congress under which the convention acted. That law authorized the convention to form a constitution and State Government, but gave them *no* authority whatever to enter into a negotiation about boundaries, which is a very different thing from forming a constitution within boundaries already given.

The boundaries of the State having, as has just been observed, been fixed by law of Congress, the convention could not change them, nor could they, without manifest impropriety, insert in the constitution any proposition to that effect. They could not, because, in the first place, they were not authorized or expected to do so; in the second place, because they were not elected for that purpose by the people; and lastly, because the constitution, for reasons heretofore assigned, is not a proper place for any proposition of this sort. If it could with propriety have been made

by the convention, such a proposition would, beyond doubt, properly have belonged, with the other propositions which were embodied in an ordinance by the convention, and with the constitution submitted to Congress.

Such seems to have been the opinion of a committee of the House of Representatives, consisting of Mr. Randolph, Mr. Elmendorf, Mr. Goddard, Mr. Henderson, and Mr. Archer, to whom was referred, on the 29d December, 1802, "a letter from Thomas Worthington, an agent appointed by the convention of the State of Ohio, enclosing a copy of the constitution of said State, and an ordinance passed by said convention, containing certain propositions for the consideration of Congress, with instructions that they do examine the matter thereof, and report the same, with their opinion thereupon, to the House." (See H. Jour. vol. 4, page 258.)

In pursuance of these instructions, this committee, on the 2d February, 1803, made their report, the preamble to which is in the following words, viz. "The committee to whom were referred a letter from Edward Tiffin, president of the convention of the State of Ohio, and a letter from Thomas Worthington, special agent of said State, enclosing the constitution thereof, together with sundry propositions in addition, and in modification of those contained in the act entitled 'An act to enable the people of the eastern division of the territory northwest of the river Ohio to form a constitution and State Government, and for the admission of such State into the Union on an equal footing with the original States, and for other purposes,' report," &c. &c. After speaking of several propositions relative to donations of land, the report proceeds to say: "The proviso contained in the sixth section of the seventh article of the constitution of the State of Ohio, respecting the northern boundary of that State, depending on a fact not yet ascertained, and not being submitted in the shape of other propositions from the convention to Congress, the committee have thought it unnecessary to take it, at this time, into consideration."

The preamble to the report from which the foregoing extract is taken, is here copied, as is the extract itself, for the purpose of showing how far one of the Ohio delegation (Mr. Vinton) is in error, when he says, in his written argument on this subject, that this report "was not a report on the constitution of Ohio, nor had it any thing to do with that constitution." It would appear by the extract from the Journal of the House, before quoted, that the constitution was referred, with other papers, to this committee, and that they were instructed to report their opinion thereupon to the House.

By the preamble here copied, it appears that the committee *did* report their opinion to the House, *not in part, but in full, on all the subjects referred to them, so far as they deemed it necessary to report at all.* The extract here quoted relates particularly and exclusively to the proposition in the constitution of the State of Ohio, on which the delegation from that State found their claim in the present controversy. Can it be said then that this report "has nothing to do with the constitution of Ohio?" It is the only report ever made in the House of Representatives, either upon that constitution, or upon any of the papers accompanying it; and the extract from it, which has been quoted, is the only report, or *part* of a report, ever made in *either* House of Congress, relative to the proposition in the constitution of Ohio, which is now the sole ground of controversy between that State and the Territory of Michigan.

For a lucid and able exposition of the grounds of dispute between Ohio and Michigan, I beg leave to refer the committee to the message of Governor Cass to the Legislative Council of Michigan Territory, in 1831, an extract of which is appended to this letter, and I also beg leave to refer the committee to two very able letters on this subject written in 1820 by the Hon. William Woodbridge, then secretary of the Territory, and (in the absence of Governor Cass) the acting Governor thereof. One of these letters was addressed to Governor Brown, then Governor of Ohio, and the other to the Secretary of State of the United States.

At Detroit, where the message of Governor Cass, and the letters of Judge Woodbridge, were written, access to congressional documents could not be had, and being obliged to rely on memory alone for both the words and sentiment of the foregoing report of Mr. Randolph, on the proviso in the constitution of Ohio, on which that State rests her claim, it is not surprising that some slight inaccuracies should have been committed. On comparing the said report of Mr. Randolph with what those gentlemen have said on the subject, such seems to have been the case. The error, however, is quite unimportant. The sentiment expressed is substantially the same; and those who think to weaken the arguments of Governor Cass and Judge Woodbridge, by showing the sentiment of Mr. Randolph's report to have been incorrectly stated, will probably be disappointed.

It will be found, on referring to that report, that it bears quite as strongly against the claim of Ohio as has ever been stated by those gentlemen. It will be observed that, instead of *one* reason, as mentioned by Governor Cass and Judge Woodbridge, the report itself assigns *two* reasons why the committee thought it unnecessary to take the proposition of Ohio into consideration. The first was that that proposition depended on a fact *not then ascertained*. This certainly might be considered a good reason why Congress should not act upon the proposition at that time, and it is a good reason why the same body should not attempt to change the boundary at the present time, for that fact is *not yet ascertained*. I beg leave to state distinctly and positively that the fact that a due eastline from the southern extreme of Lake Michigan will not intersect the national boundary in Lake Erie, is *not yet ascertained*. On the contrary, it is known that such a line *will intersect* the national boundary, or, if it does not, the difference will be so trifling that it can scarcely be told.

The other reason assigned in the report, why the committee thought it unnecessary to consider the proposition of the convention, is, that said proposition was "not submitted in the shape of the other propositions from the convention to Congress." If it were a proposition at all, it should have been placed among the other propositions, as has been before remarked; and if it were not a proposition, it might be classed among the idle, nugatory, and unauthorized provisions in the constitution, of which the convention might have inserted a hundred; and still Congress, as has been before shown, would have been obliged to accept said constitution, *provided* it was republican in its character. Here are certainly two good and sufficient reasons assigned why neither the committee nor Congress should act on the subject at that time, and why they should leave the boundaries of Ohio as they were fixed in the law authorizing her to form a constitution. Congress did so leave them. On the 19th February,

1803, the President of the United States approved an act of that body, entitled "An act to provide for the due execution of the laws of the United States within the State of Ohio;" the preamble to which act is in the following words, viz. "Whereas the people of the eastern division of the territory northwest of the river Ohio did, on the twenty-ninth day of November, one thousand eight hundred and two, form for themselves a constitution and State Government, and did give to the said State the name of the 'State of Ohio,' in pursuance of an act of Congress entitled 'An act to enable the people of the eastern division of the territory northwest of the river Ohio to form a constitution and State Government, and for the admission of such State into the Union on an equal footing with the original States, and for other purposes,' whereby the said State has become one of the United States of America; in order, therefore, to provide for the due execution of the laws of the United States within the said State of Ohio, Be it enacted," &c. &c.

This, it will be remembered, is the only act of Congress ever passed in reference to the acceptance of the constitution of the State of Ohio, and the admission of that State into the Union; and the preamble, it will be observed, expressly states that the constitution then accepted was formed *in pursuance* of the act of Congress of 30th April, 1802. Of course, whatever is *not* in pursuance of said act, can form no part of the constitution then accepted; and if there be any such proposition in any part of the instrument, it must be classed among the unauthorized and nugatory provisions before spoken of, which Congress could not consistently notice, because that body had not the power either to prevent or correct them.

What has been said is believed sufficient to show, satisfactorily, that Congress, in admitting the State of Ohio into the Union, did not assent, either expressly or impliedly, to the proposition contained in her constitution relative to her northern boundary; and it is only necessary to refer to the Journal of the Senate, and of the House of Representatives, to show, beyond the possibility of doubt or contradiction, that such was the universal understanding at the time of her admission. Even the delegation from that State had not, *at that time*, the slightest idea that her proposition was assented to by Congress.

Thomas Worthington, afterwards Governor of the State, it will be recollected, was appointed by the convention of Ohio a special agent to present her constitution to Congress for acceptance; and as he was in Washington, and associating with the members of Congress during the time when said constitution was under consideration by that body, he must have known perfectly well their understanding in relation to every part of that instrument.

On the 19th February, 1803, the act passed extending the laws of the United States over the State of Ohio, (equivalent to admitting Ohio into the Union,) and eight months afterwards, on the 17th day of October, in the same year, at the opening of the next session of Congress, the aforesaid Thomas Worthington took his seat, as the first Senator from that State, in the Senate of the United States.

The following extracts from the Journals of the Senate will show that the line which he proposed as the southern boundary of Michigan, was a line drawn east and west through the southern extreme of Lake Michigan; and they will also show that the idea that Congress had assented to the proposition of Ohio, had then never entered his mind, nor the mind of any other member of the Senate.

His first public act was, on the 21st October, (the sixth day of the session,) to present the memorial of "Joseph Harrison and others, citizens of the United States, residing in that part of the Indiana territory which lies north of an east and west line extending through the southerly bend or extreme of Lake Michigan, praying that that district may be erected into a separate Government; and the memorial was read.

"On motion, *ordered*, That it be referred to Messrs. Worthington, Breckenridge, and Franklin, to consider and report thereon."

Mr. Worthington was thus made chairman of the committee, and, on the 1st day of November following, he made a report favorable to the prayer of the petitioners, and concluding with the following resolution, viz. "*Resolved*, That the prayer of the memorial of Joseph Harrison and others ought to be granted, and that all that portion of the Indiana territory which lies north of a line drawn east from the southernmost extreme of Lake Michigan, until it intersects Lake Erie, and west from the said southernmost extreme of Lake Michigan, until it shall intersect the Mississippi river, shall form a separate territory, and that the said territory shall, in all respects, be governed by, and according to, the principles and regulations contained in 'An ordinance for the government of the territory of the United States northwest of the river Ohio,' passed on the 13th day of July, 1787.

"And the report was adopted.

"On motion, *ordered*, That the committee who made the report be instructed to prepare and bring in a bill accordingly.

"A motion was made that it be

"*Resolved*, That the sixth section of the seventh article of the constitution of the State of Ohio be referred to a committee, to consist of _____ members, with instructions to examine and report thereon, by bill or otherwise; and it was agreed that this motion lie for consideration.

"On motion,

"The Senate adjourned to eleven o'clock to-morrow morning." (See Senate Journal, vol. 3, pages 300 and 306.)

"WEDNESDAY, November 2, 1803.

"On motion,

"It was agreed that the motion made yesterday for a committee to examine the seventh article of the constitution of the State of Ohio be withdrawn, and that the following resolution be adopted:

"*Resolved*, That the proposition of the convention of the State of Ohio to the Congress of the United States of America, contained in the sixth section of the seventh article of the constitution of that State, be referred to a committee, with leave to report thereon, by bill or otherwise; and,

"*Ordered*, That it be referred to Messrs. Worthington, Breckenridge, and Franklin, the committee who, on the 21st of October last, had under consideration the petition of Joseph Harrison and others, to consider and report thereon to the Senate." (Senate Journal, vol. 3, page 307.)

"FRIDAY, November 4, 1803.

"Mr. Worthington, from the committee appointed on the 21st of October last on the petition of Joseph Harrison and others, and on the propo-

sition contained in the sixth section of the seventh article of the constitution of the State of Ohio, reported a bill to divide the Indiana territory into two separate Governments, and giving the assent of Congress to the proposition of the convention of the State of Ohio, contained in the sixth section of the seventh article of the constitution of that State; which bill was read.

“Ordered, That it pass to the second reading.”

(Senate Journal, vol. 3, page 307.)

“MONDAY, November 7, 1803.

“The bill to divide the Indiana territory into two separate Governments, and giving the assent of Congress to the proposition of the convention of the State of Ohio, contained in the sixth section of the seventh article of the constitution of that State, was read the second time.

“Ordered, That it be referred to Messrs. Bradley, Tracey, Baldwin, Worthington, and Franklin, to consider and report thereon to the Senate.”

(Senate Journal, vol. 3, page 309.)

“WEDNESDAY, November 16, 1803.

Mr. Bradley, from the committee to whom was referred on the 7th inst. the bill to divide the Indiana territory into two separate Governments, and giving the assent of Congress to the proposition of the convention of the State of Ohio, contained in the sixth section of the seventh article of the constitution of that State, reported the bill with amendments; which were read.

“Ordered, That they lie for consideration.”

(Senate Journal, vol. 3, page 312.)

“MONDAY, December 5, 1803.

“The Senate took into consideration the amendments, reported on the 16th November last, to the bill to divide the Indiana territory into two separate Governments, and giving the assent of Congress to the proposition of the convention of the State of Ohio, contained in the sixth section of the seventh article of the constitution of that State; and having agreed thereto, and further amended the bill,

“Ordered, That it pass to a third reading as amended.”

(Senate Journal, vol. 3, page 320.)

“TUESDAY, December 6, 1803.

“The bill to divide the Indiana territory into two separate Governments, and giving the assent of Congress to the proposition of the State of Ohio, contained in the sixth section of the seventh article of the constitution of that State, was read the third time, and further amended; and

“Resolved, That this bill pass, that it be engrossed, and that the title thereof be ‘An act to divide the Indiana territory into two separate Governments.’

“Ordered, That the Secretary request the concurrence of the House of Representatives in this bill.”

(Senate Journal, vol. 3, page 321.)

The bill went to the House of Representatives, and, after being further amended, was, on the 21st day of February, there *rejected*. All that part, however, which related to giving the assent of Congress to the proposition of the convention of Ohio, contained in the sixth section of the seventh article of the constitution of that State, it will be perceived, *was rejected* before the bill passed the Senate, notwithstanding the Senator from Ohio was made chairman of the committee who reported it, and had every advantage to secure its passage.

The original bill, in Mr. Worthington's own handwriting, is now among the manuscripts in the archives of the Senate. It is almost word for word the same as the bill which afterwards passed Congress, and was approved January 11, 1805, with the addition of the part which was rejected, which is in the following words, to wit:

"And be it further enacted, That the assent of Congress be, and is hereby, given to the proposition of the convention of the State of Ohio, contained in the sixth section of the seventh article of the constitution of that State, and which is in the words following, to wit," &c.

After the decided rejection of this proposition by Congress, within less than nine months from the date of the admission of Ohio into the Union, it is difficult to conceive how it can now be seriously argued that Congress had already given their assent to the same thing at the time of the admission of Ohio, especially as the measure was brought forward, and urged on Congress by the first Senator from that State, who was present when Congress admitted her into the Union, and must have known perfectly well the understanding as to what was, and what was not, assented to by that body.

It is clear that Governor Worthington did not suppose that the aforementioned proposition of the convention of Ohio, relative to her northern boundary, had ever been assented to by Congress, or he would not have thought it necessary so soon to ask and urge that the same thing should be done again; and it is equally clear that Congress did not suppose *they* had ever intended to give their assent to the proposition, even by implication; for, if they had, such assent would have been alluded to in the proceedings of the Senate; and there certainly could be no objections to giving it again in express terms, when asked and urged to do so by a Senator from the State principally interested in the matter.

Jeremiah Morrow was the first Representative elected by the people of the State of Ohio to the Congress of the United States, and took his seat in the House of Representatives on the same day that Governor Worthington took a seat in the Senate. He was the sole Representative from his State in the House of Representatives from that time down to the year 1813; but there is no evidence that he ever believed the aforesaid proposition of the convention of Ohio had even been assented to by Congress. On the contrary, the journals of the House expressly show that he entertained a different opinion; for, on the 4th of January, 1812, he introduced the following resolution:

"Resolved, That a committee be appointed to inquire into the expediency of confirming the northern boundary of the State of Ohio, as designated by the constitution of that State, and of providing by law for the actual surveying of the western boundary lines of the said State, and that they report by bill or otherwise." (House Journal, vol. 8, page 109.)

This resolution resulted, as has been before remarked, in the passage of an act of Congress, providing for the actual survey and establishment of the northern boundary of Ohio, not according to the wishes of Mr. Morrow, but according to the provisions of the act of Congress of 30th April, 1802.

The resolution shows conclusively that he believed the proposition of the Ohio convention had never been assented to or confirmed; and such was also the sentiment of Congress, as expressed by their proceedings on that occasion; and also, subsequently, by their proceedings on the resolution of Mr. Brush, of Ohio, soon after the survey made under the aforementioned act had been returned to Congress.

The resolution of Mr. Brush was introduced in the House of Representatives February 23, 1820, and is as follows, viz.

“Resolved, That a committee be appointed to inquire into the expediency of providing by law for surveying, marking, and permanently establishing the northern boundary line of the State of Ohio, beginning at the point north of the most northerly cape of the Miami bay; running thence, due west, to intersect the western line of said State.”

This resolution the House refused to consider; (House Journal, 1st Session, 16th Congress, pp. 239, 287, 362, 436;) and on the 24th April, following, Mr. Woodbridge, the Delegate from Michigan, submitted the following resolution:

“Resolved by the Senate and House of Representatives of the United States of America in Congress assembled, That the line heretofore caused to be surveyed, marked, and designated, from the southern extreme of Lake Michigan, due east, in pursuance of the provisions of the act entitled ‘An act to authorize the President of the United States to ascertain and designate certain boundaries,’ passed May 13, 1812, so far as the same extends due east from the eastern boundary line of the State of Ohio, be and remain the established boundary line between the said State of Ohio and the Territory of Michigan.” (House Journal, 1st Session, 16th Congress, page 449.)

The said resolution was read the first and second time, and referred to the Committee on Public Lands, of whom Mr. Anderson, of Kentucky, was at that time chairman; and, after hearing the subject fully and ably discussed before them by the Representatives from Ohio and the Delegate from Michigan, the committee reported unanimously the resolution without amendment; and nothing apparently but the hurry of business, at the close of a long session, prevented its passage at that time through both Houses of Congress.

The foregoing extracts from the journals of Congress show clearly the opinions and belief of the first Senators and Representatives of Ohio on the subject of their northern boundary; and it may not be amiss here to remark that one of the gentlemen, (Mr. Vinton,) who has so ably argued the cause of Ohio before the committee, seems himself to entertain opinions now, on this question, quite different from those held by him a few years ago. He now contends strongly that Congress, on the admission of Ohio into the Union, assented to the proposition of her convention, contained in the sixth section of the seventh article of the constitution of that State.

On looking back a little, I find that, on the 4th of January, 1828, he submitted the following resolution:

“Resolved, That the Committee on the Territories be instructed to inquire into the expediency of giving the assent of Congress to the provisions of the sixth section of the seventh article of the constitution of Ohio relative to the boundary line between the State of Ohio and the Territory of Michigan.” (Journal of the House of Representatives, 1st Session, 20th Congress, p. 124.)

The above resolution, like several others before noticed, certainly implies a belief that the provisions of the sixth section of the seventh article of the constitution of the State of Ohio had never received the assent of Congress; and that such is the fact, is believed now to have been fully shown in the foregoing view of all the legislation of Congress on this subject.

Against so many positive laws, and the uniform and invariable bearing of so long a course of legislation, it will hardly be seriously contended that the State of Ohio can have any legal right whatever to any portion of country north of a line drawn due east from the southern extreme of Lake Michigan. And here the Territory of Michigan might safely rest her case, confident that Congress never has assented, and in the full belief that, in opposition to so many of their own acts, that body never will assent to an enlargement of the boundaries of Ohio.

Even supposing the Territory had no rights involved in this case, and that Congress could divide and dispose of the country within her limits as they might deem expedient, still Michigan might safely rely upon obviously just considerations of national policy, to prevent the extension and aggrandizement, at her expense, of a State already so gigantic and powerful as to threaten to overshadow and subject the whole West to her dominion and control.

That State, it is obvious, should not receive from Michigan a particle of territory more than is strictly and legally her due; when all that is given her, if taken from Michigan, must tend to make the weak weaker, and the strong stronger. But Michigan *has* rights involved in the settlement of this question, as has been shown already, and as will more clearly appear, by a further and fuller consideration of the ordinance of Congress of the 13th July, 1787, the articles of which are in the ordinance itself declared to be “articles of compact between the original States and the people and States in the territory northwest of the river Ohio, and forever to remain unalterable unless by common consent.”

This ordinance having been ratified by the State of Virginia, the grant of the whole Northwestern Territory to the United States was, and is now, as unalterable as the federal constitution, and by it the people of Michigan most solemnly believe and declare that their southern boundary is a line drawn due east and west through the southern extreme of Lake Michigan; and that whenever there may be 60,000 free inhabitants north of said line, they believe they have a right to be admitted into the Union as a sovereign and independent State, on the same footing with the original States in all respects whatever.

The provisions of the fifth article of the ordinance in relation to this line, as well as all the lines therein described, are so plain, that it is believed nothing now prevents its universal recognition as the southern boundary of Michigan, but two different acts of Congress at variance therewith, which were passed, without sufficient examination, at a time when Michigan was not represented in Congress. The two acts alluded

to are those admitting the States of Indiana and Illinois into the Union, with boundaries extending north of this east and west line ; which acts the people of Michigan fully believe never would have passed, had they been represented, or had the attention of Congress been directed particularly to the provisions of the ordinance aforesaid.

It is reported, on the best authority, that, at the time of the admission of Illinois, Nathaniel Pope, the Delegate from that Territory, himself acknowledged that he owed the success of his experiment in claiming north of this line, to the circumstance that no one felt interest enough to look into the matter and oppose him.

This statement is much strengthened by the fact that he was made chairman of the select committee to whom the subject of the admission of Illinois was referred, and had thus an opportunity to give such a direction to the deliberations of the committee, in a matter which then seemed principally to concern his constituents, as to prevent a strict inquiry into the provisions of the ordinance. A bill authorizing the State to form a constitution and State Government was presented by the chairman of the committee, but no other report was made to the House ; not a word was said about the boundaries described in the ordinance : and from all that can be gathered from the journals of both Houses, the bill, so far as relates to boundaries, seems to have passed with but very little attention from any quarter, excepting from the quarter where all were interested in preventing examination. (Jour. H. R. 1st Session, 15th Congress, pp. 174, 423, 428, 461, 466, 476, 492.)

These remarks will also apply, with great force and propriety, to the legislation of Congress authorizing the State of Indiana to form a constitution and State Government in 1816, two years previous to the admission of Illinois into the Union.

Jonathan Jennings, then Delegate from the Territory of Indiana, was made chairman of the select committee to whom the subject of the admission of that State into the Union was referred ; and being thus placed in a situation to exert a controlling influence, the committee seem to have paid about as much attention to the rights involved in the question which they were then considering, as was afterward given to similar rights, on the admission of Illinois, before spoken of. It is true that, on the 5th January, 1816, Mr. Jennings made a short report on the subject referred to the committee ; but in that report the boundary described in the proviso of the fifth article of the ordinance of 1787 is kept wholly out of view, and not even alluded to. (House Journal, 1st Session, 14th Congress, p. 128, and Rep. of same session, No. 21.)

The chairman, who doubtless wrote the report which he submitted to the House, seems to have been conscious that even to name this proviso of the ordinance would call too much attention to it, to suit the interests of Indiana, and therefore the whole subject was studiously avoided, both by Mr. Jennings in this case, and by Mr. Pope at the time of the admission of Illinois.

There were but five members on the committee in either of these cases, any three of whom would, of course, form a majority for the transaction of business ; and, as the chairmen were the only persons who, it can be presumed, felt any particular interest in the subject before them, it is not to be wondered at that every thing which would have a tendency to opo-

rate against their views and wishes should have been passed over in silence. Nor is it at all surprising that laws, conflicting with the ordinance, should have been passed by Congress, when it is considered that the country north of the aforesaid east and west line was not represented in that body. So soon after the unfavorable report of the surveyors, sent out from Ohio to locate military bounty land, it was thought to be so poor, cold, and inhospitable, that it never would be formed into States; and, consequently, that the establishment of the northern boundary of the aforementioned States was a matter of very little importance.

Even had the provisions of the ordinance been well considered, and the east and west line running through the southern extreme of Lake Michigan acknowledged to be the true division intended by the proviso in the fifth article, it is doubtful whether the members of Congress would, under the circumstances, have opposed the wishes of Indiana and Illinois, knowing, as they must, that, whenever a State should be formed north of those States, so much of the act which they were then passing, as might conflict with the aforesaid proviso, would be null and void.

This view is said to have been taken by some members at that time; but, from the organization of the committees, the report of Mr. Jennings, and all that appears in the journals of Congress relative to the passage of the acts admitting Indiana and Illinois into the Union, it seems evident that, in passing those acts, the provisions of the ordinance were kept out of view as much as possible.

And yet these acts, passed under such circumstances, and *ex parte* as they were, are now relied on as precedents, to settle the construction which Congress is, and of right ought, to place on that part of the ordinance which relates to the line or boundary now in question! How far such reliance is just or proper, is respectfully submitted for the consideration of the committee.

To most persons, if not to all, it is believed the language of the ordinance itself, so far as relates to boundaries, is plainer and clearer than any comment or construction whatever can make it; and, on reading over the fifth article for the first time, probably ninety-nine persons out of every hundred would be at a loss to see what part of it is doubtful.

In answer to the question "What is to be the north boundary of Ohio, Indiana, and Illinois, if Congress should form more than three States in the Northwest Territory?" they (the 99) would all agree that it is a line drawn east and west through the southern bend or extreme of Lake Michigan. This is the obvious meaning of the proviso; yet study and ingenuity, stimulated by interest, have, within a few years, found out that this is not at all the boundary which it was supposed to be, that it is merely a "descriptive boundary," intended to be a limit for the people on one side, and a *license* for those on the other; or, in other words, that the one or two States, which Congress has authority to form in the Northwestern Territory, cannot extend south of this line, while the three States, already formed, may be extended north of it at pleasure.

The reasons are not very obvious for a provision so one-sided and unjust as this is; and that it was never intended, may be inferred from its unfairness and injustice, as well as from the following considerations, viz.

It will be observed that, in fixing the limits for each of the States, described in the fifth article of the ordinance, particular attention was paid

to natural boundaries, in all cases where it could be done with propriety ; and conspicuous and well known places were selected for the corners of the States, on the Ohio river—places which might be regarded as starting points that would easily be known, and could never be mistaken in all future time. Such is the mouth of the Great Miami, the Wabash, and Post Vincent ; and such, likewise, is the southern extreme of Lake Michigan, which was fixed on as the point through which the said east and west boundary line was to run ; because it was the most conspicuous, well known, and unchanging natural object to be found for many miles in that part of the Northwestern Territory. These are certainly very obvious reasons why that point should have been selected ; and they go to prove that the east and west line drawn through it is the true division line intended to be established by the proviso of the fifth article of the ordinance, in the event that Congress should deem it expedient to form more than three States northwest of the river Ohio.

This is the only construction that can be given to that proviso, without rendering it unfair and unjust ; and the only one free from some degree of absurdity. It has been asked, “ why did the proviso say Congress should have authority to form one or two States in that part of said territory, &c. instead of *of that part*, &c.” The reason is obvious. The whole fifth article is descriptive of boundaries within which States were to be formed ; and it was therefore more natural to use the word “ in ” than “ of ” in describing those boundaries *within* which certain things were provided for.

If it had been intended only to point out the section of country, *some-where* in which, or *any where* in which, Congress might form one or two States, as has been stated to the committee by the gentleman from Ohio, (Mr. Allen,) why was the southern extreme of Lake Michigan made a point in the description ? Why not have said, “ Congress may form one or two other States in the north part of said territory, whenever they may deem it expedient ? ” This would have been shorter and directly to the purpose, if the intention of Congress had been as contended for by Messrs. Vinton and Allen.

Is it reasonable to suppose that Congress would define, with so much precision, where an east and west line should run, and yet leave the State or States to be formed north of this line, without any definite boundary to separate them from the States south of them ? It is impossible that such could have been the intention of the parties to the compact. The construction given by the delegation from Ohio is contrary to the obvious meaning of the language used, and repugnant to the leading characteristics of the whole description of the fifth article ; which characteristics are precision, brevity, and a seizing upon prominent and well known natural objects, to fix the different important points in the boundaries described. It is also against all reasons drawn from a consideration of the state of the country, and of the great objects which the framers of the ordinance had in view. The leading motive for laying off and dividing the Northwestern Territory, as is done by the aforesaid fifth article of the ordinance, was to form the country into States, of such size, and with such boundaries, that they might each “ become a speedy and sure accession of strength to the confederacy.” This grand object was avowed, in the very language just quoted, in the preamble to a resolution of Congress of the 7th of July, 1786, recommending to the State of Virginia so to alter her act of cession as to per-

mit Congress to lay off not less than three nor more than five States in the territory northwest of the river Ohio. Now, if the States of Ohio, Indiana, and Illinois, can be extended north of the east and west line described in the ordinance, the one or two States which Congress have determined eventually to form north of said line, may be prevented coming into the Union for fifty years to come; and thus, so far as relates to two of the five States, the great object of the framers of the ordinance would be defeated.

By the conditions and terms of the cession of Virginia to the United States, on the 1st of March, 1784, the whole Northwestern Territory was to be laid off into States of not less than one hundred nor more than one hundred and fifty miles squared; but this mathematical division, it was found, would so cut to pieces the territory, that some of the States thus to be formed would not be able, for a long time, if ever, to enter the Union, and participate in the blessings, enjoyment, and advantages of our republican form of Government; and for this reason it was that Congress, on the 7th of July, 1786, passed a resolution recommending to the State of Virginia so to alter her deed of cession as to allow the territory to be laid off and formed into not less than three nor more than five States, with a view to their becoming members of the Federal Union.

As the journal of the proceedings of the old Congress, on the passage of this resolution, will throw some light on the division of the Northwestern Territory into States, with the boundaries as established unalterably by the ordinance which was passed about a year afterwards, all that part of them which can have any bearing upon the subject now under consideration is copied entire, as follows, viz.

“FRIDAY, July 7, 1786.

“Congress took into consideration a report of a grand committee, to whom, among other things, was referred a motion of Mr. Monroe respecting the cessions of Western Territory, and forming the same into States; and the committee having submitted that it be

“*Resolved*, That it be recommended to the Legislatures of Massachusetts and Virginia to take into consideration their acts of cession, and revise the same, so far as to empower the United States in Congress assembled to make such division into States of the ceded lands and territory, as the situation of the country and future circumstances may require; with this limitation and condition, however, that all the territory of the United States lying northwest of the river Ohio shall be formed into a number of States, not less than two, nor more than five, to be admitted into the confederacy on the principles and in the forms heretofore established and provided—

“A motion was made by Mr. Grayson, seconded by Mr. Lee, (both of Virginia,) to postpone the consideration of the same, in order to take up the following:

“That it be recommended to the States of Virginia and Massachusetts so to alter their acts of cession, as that the States in the Western Territory may be bounded as follows: There shall be three States between the Ohio and a line running due east from the Mississippi to the eastern boundary of the United States, so as to touch the most southern part of Lake Michigan. The State lying on the Mississippi shall be separated from the middle State by a line running due north from the western side of the

mouth of the Wabash river, until it intersects the said east line : the middle State shall be separated from the others by the aforesaid line, and a line running also due north from the western side of the mouth of the Big Miami, till the intersection thereof with the said east line ; and the other State shall be divided from the middle State by the said line, the said east line, Lake Erie, the bounds of Pennsylvania, the other original States, and Ohio. There shall be a State between the said east line, Lake Michigan, Lake Huron, and the straits of Michilimackinac ; and another between the said east line, the Lakes Michigan and Superior, and the boundary line of the United States and the river Mississippi, to be added into the confederacy on the principles and in the forms heretofore established and provided.

"And, on the question to postpone for the purpose above mentioned, the yeas and nays being required by Mr. Grayson," the States of Maryland Virginia, North Carolina, Georgia, and Rhode Island, voted in the affirmative ; New Hampshire, Massachusetts, Connecticut, New Jersey, and Pennsylvania, voted in the negative ; and New York and South Carolina were divided. The votes on each side being equal, the motion was lost. All three of the Delegates from Virginia, however, voted in its favor.

The resolution offered by the committee, being then amended, finally passed on the same day, with a preamble as follows, viz.

"Whereas it appears, from the knowledge already obtained of the tract of country lying northwest of the river Ohio, that the laying it out and forming it into States, of the extent mentioned in the resolution of Congress of the 10th October, 1780, and in one of the conditions contained in the cession of Virginia, will be productive of many and great inconveniences ; that, by such a division of the country, some of the new States will be deprived of the advantages of navigation, some will be improperly intersected by lakes, rivers, and mountains, and some will contain too great a proportion of barren, unimprovable land, and of consequence will not for many years, if ever, have a sufficient number of inhabitants to form a respectable Government, and entitle them to have a seat and voice in the federal councils : and whereas, in fixing the limits and dimensions of the new States, due attention ought to be paid to natural boundaries, and a variety of circumstances, which will be pointed out by a more perfect knowledge of the country, so as to provide for the future growth and prosperity of each State, as well as for the accommodation and security of the first adventurers : in order, therefore, that the ends of Government may be attained, and that the States which shall be formed may become a speedy and sure accession of strength to the confederacy,

"Resolved, That it be, and it hereby is, recommended to the Legislature of Virginia to take into consideration their act of cession, and revise the same, so as to empower the United States in Congress assembled to make such a division of the territory of the United States lying northerly and westerly of the river Ohio, into distinct republican States, not more than five, nor less than three, as the situation of that country and future circumstances may require, which States shall hereafter become members of the Federal Union, and shall have the same rights of sovereignty, freedom, and independence as the original States, in conformity with the resolution of Congress of the 10th October 1780."

This preamble and resolution fully set forth all the reasons why the State of Virginia should alter her act of cession so as to authorize Congress to

make a different division of the Northwestern Territory into States, not "more than five, nor less than three, as the situation of that country and future circumstances may require." And it is plain that they contemplated the action of Congress on this subject soon after the consent of Virginia should have been obtained. Congress, however, did not finally wait for this. At the suggestion of the Delegates from that State, they anticipated the consent of Virginia, which was afterward granted, and one year and six days from the adoption of the above resolution, they proceeded, on the 13th July, 1787, to pass the ordinance which divides the whole Northwestern Territory into States, as they supposed the situation of the country and circumstances then future would require. The boundaries of those States are fixed and described in an article which, with five other articles of said ordinance, is declared to be forever unalterable, unless by common consent. These boundaries are so clearly described as hardly to admit of a doubt in regard to any of them; but, as claims have been set up by three of those States, which are believed to conflict directly with the rights of the one, or two others that may, and will yet be formed in the Northwestern Territory, it has been attempted, in the foregoing pages to prove, that, in the event of the formation of more than three States in said territory, the northern boundary of the States of Ohio, Indiana, and Illinois, must be a line drawn east and west, through the southern extreme of Lake Michigan.

All that has been contended for on this subject will be fully confirmed by a reference to the foregoing resolution, or motion of Mr. Grayson.

On comparing the boundaries of the States, as described in the fifth article of the ordinance, with the boundaries of the States proposed to be laid off by Mr. Grayson, their agreement, in all their leading features, will be found to be so almost entirely perfect, that it is impossible to resist the conclusion that the one was adopted and copied from the other. This is made the more certain, as Mr. Grayson was at that time one of the three Delegates in Congress from Virginia, with all of whom this proposition seems to have been a favorite measure; and, as that State had so generously come forward and ceded all her wide extent of vacant territory to the United States, it seems altogether reasonable that, in relation to any plan for dividing said territory into States, her wishes should have been very favorably regarded; but whether they were, or were not so regarded, she held the power in her own hands, and could insist on such boundaries as she chose. It will be observed that, in considering the resolution of Mr. Grayson, no objections were offered to the boundaries which he proposed for the different States: not a word was said against *them* from any quarter, but there was a difference of opinion as to the expediency of positively forming, at that time, so many States. The situation and circumstances of the country, it was thought by many, did not require it; and, on taking the question, the yeas and nays being equal, the motion was lost. The resolution, however, is important, as it shows the plan of the Virginia delegation for dividing the whole territory; and, when all the circumstances are taken into view, it is believed there can be no doubt in the mind of any one that all the leading features of this plan were adopted in the ordinance of 1787, so far as relates to the boundaries of each and every one of all the States, which the fifth article of said ordinance provides shall be formed, either positively or contingently, in the Northwestern Territory.

If this be so, it follows that, beyond all possibility of doubt, the true northern boundary of the States of Ohio, Indiana, and Illinois, is a line

drawn due east and west, through the southern extreme of Lake Michigan; and all acts, and parts of acts of Congress, or of either of those States, so far as they do or may conflict with this boundary, are, and must be, null and void.

To prove, however, that the State of Ohio has an equitable claim to a large tract of country north of this line, the delegation from that State have attempted to show the committee that the southern extreme of Lake Michigan is several miles farther south than it was supposed to be in 1787, and that, consequently, if this east line be now considered their northern boundary, that State, as well as the States of Indiana and Illinois, will lose large tracts of country, which it was the intention of the framers of the ordinance to give them. To convince the committee of this, a lithographic map has been procured, purporting to represent the relative situation of Lake Michigan, the upper end of Lake Erie, and also the Mississippi and Ohio rivers, as they were laid down on Mitchell's and Bradley's maps, about the year 1780, compared with the true position of these objects, as they are now known to be situated.

This map clearly shows that neither the southern extreme of Lake Michigan, nor any other place in the whole Northwestern Territory, is found to be now precisely as it was supposed to be then; and if it be admitted that Ohio has a right, or that she can, in equity, claim to a line running due east from the southern extreme of Lake Michigan until it intersects Lake Erie, according to the representation on this map, without reference to any other points, or to any other maps, then it is conceded that there might be some justice in giving to that State a part, at least, of the tract of country for which she is now contending. But if the map be made a criterion by which to judge of the intention of the framers of the ordinance, in relation to one boundary, it must likewise be so for all the boundaries established at the same time; and it seems to have escaped the notice of those who urge this argument, that, if this rule were adopted, the State of Illinois would lose a tract of country on her southwestern border, (between where the Mississippi runs and where it was supposed to run,) of 250 miles long, and more than 40 broad. The State of Indiana would lose a strip of country at least 40 miles wide throughout her whole western limits; and the State of Ohio would lose ten miles wide from her western boundary, besides about two or three thousand square miles on the south and southwestern shore of Lake Erie, between where the shore of the lake really is, and where it was supposed to be at the time of the adoption of the ordinance. In short, by this rule, all the boundaries described in the ordinance would be changed from ten to a hundred miles from their present situation.

The absurdity in the State of Ohio's resting a claim to any portion of the Territory of Michigan upon such ground, is too apparent to require any thing more to be said on this subject.

That the geography of the country was but imperfectly known at the time of the passage of the ordinance dividing the Northwestern Territory into States, is a fact of which the framers of the instrument were as well aware as we are at the present time; but this imperfection of their geographical knowledge, so far from giving countenance to an argument against the boundaries then established, is most undoubtedly the very reason why the southern extreme of Lake Michigan, the mouth of the Great Miami, and other prominent and well known natural objects, were then selected

as points through which these boundaries were to run, and by which they might be known throughout all future time. It is also the reason why so few points were fixed upon, and right lines drawn from them, east and west and north, without the mention of other points, which it was thought probable these lines might strike, lest there should be some discrepancy between them.

The time had arrived when both the State of Virginia and the United States thought it necessary and proper that the whole Northwestern Territory should be divided into States, with fixed and permanent boundaries, by which they should come into the Union whenever the population within those boundaries would entitle them to do so. Enough was known of the leading features in the geography of the country, to authorize the parties to the compact to proceed to establish those boundaries, and, in doing this, it was evidently of far less consequence that any particular line should run, so as to give a few miles more or less to any one State, than that such line should be well defined, and so distinctly marked and described, by some prominent natural object, that it could never be mistaken.

This was doubtless the consideration which induced the selection of a point so far north as the southern extreme of Lake Michigan, through which to extend the division line between the three States south and the two States that might be formed north of that line. Had it not been for this, the known fertility of the country south, and the rigorous climate and forbidding aspect of the whole country north of that line, would have pointed to a more southern division, as best calculated to equalize the advantages, promote the prosperity, and secure the early admission of all the States there formed into the confederacy on the same footing with the original States.

It probably is the case, as stated by the Ohio delegation, that the line running due east from the southern extreme of Lake Michigan is now found to intersect Lake Erie somewhat farther south than it was, at that time, supposed it would; but this is not more attributable to ignorance of the precise situation of the southern extreme of Lake Michigan, than to a mistake as to the true position of Lake Erie. The upper end of that lake is now found to be from 15 to 30 miles farther north than was supposed at the time of the adoption of the ordinance; and, in consequence of this, the State of Ohio gains some two or three thousand square miles on the southern shore of that lake, more than was expected, even judging by the lithographic map which her own delegation have procured. Is it then, under these circumstances, just that that State should have given to her all the country as far north as any particular place on the border of the lake, where it might have been supposed the aforesaid east line would intersect, when that place was not named in the ordinance, and is now found to be several miles farther north than was then supposed? Such a proposition from Ohio can certainly meet with very little favor, and could not meet with more, even if Congress had the power and the right to comply with her wishes.

But it is urged by the committee of the Ohio delegation, (Messrs. Vin-ton and Allen,) that the line running east from the southern extreme of Lake Michigan will, after passing through a part of Lake Erie, cut off a portion of some of the northern and northeastern counties of that State; that it does not intersect the national boundary, as was intended by the act of Congress authorizing the people of Ohio to form a constitution and

State Government ; and that said east line, as mentioned in the ordinance and in the aforesaid act of Congress, being impracticable, is, therefore, entirely null and void.

In reply to this, it might be sufficient, perhaps, to call the attention of the committee to the fact that there is nothing in the ordinance which requires that this line should intersect the national boundary ; and as no act of Congress can make any provision valid, contrary to the provisions of the ordinance, there can be nothing in the law authorizing Ohio to form a constitution and State Government that can require it ; and of course the line must stand good as it is.

Admit, however, what is very far from being certain, that it was the expectation of the parties to the ordinance at the time of its adoption, that this line would, and their intention that it should, intersect the national boundary in Lake Erie, still there is nothing to show that it is impracticable. It has never yet been ascertained that it does not intersect the national boundary in that lake, and consequently its impracticability has never been shown.

Let what is doubtful, however, be assumed to be true ; suppose it ascertained that the line does not intersect, and let it also be assumed to have been the intention of the parties to the ordinance that it should intersect, the national boundary in Lake Erie, a case would then be made out, which could be easily settled by the plain and well known rules of interpreting all surveys, where the course and distance, or the course and a given object disagree. The course in such cases must always conform to the object. The line, instead of due east, would run from the southern extreme of Lake Michigan as near east as possible, and intersect the national boundary at its most southern point in the lake. Such a line, there is no doubt, would coincide very nearly with the one already established, under the act of Congress before spoken of.

It is believed now to have been satisfactorily shown : 1st. That all the legislation of Congress, from 1787 down to the present time, has been uniformly opposed to the claim set up by the State of Ohio. 2d. That the proposition in the sixth section of the seventh article of the constitution of that State, on which she mainly rests her claim, was never assented to by Congress, not even impliedly ; and was never believed or supposed to be assented to, by the delegation from that State, for many years subsequently to her admission into the Union. 3d. That an east and west line drawn through the southern extreme of Lake Michigan is unalterably fixed and established as the true northern boundary of the States of Ohio, Indiana, and Illinois, by the ordinance of 1787 ; and that all acts, and parts of acts, of Congress conflicting therewith are, and must be, null and void.

It only remains to notice, very briefly, the argument urged by the committee of the Ohio delegation, on the ground of expediency. And on this head it might be sufficient to remark, that in cases like this, where the most important rights are guaranteed by the most solemn compact, nothing can be expedient that is not clearly in accordance with the provisions of law.

The State of Ohio, however, claims that her northern boundary should be extended to the north cape of Maumee bay, so as to include the mouth of Maumee river, because that river runs through a portion of her territory ; and because, as was alleged before the committee, rivers should not have their course in one State and their termination in another.

The strong claim that Indiana would have to the mouth of the Maumee, according to this argument, seems to have been wholly overlooked ; and it

seems also to have been overlooked, that on this principle three-fourths of the States in the Union have as much right to a change of their boundaries as the State of Ohio in this instance. The principle would lead to results altogether disorganizing and impracticable.

In this instance the river affords not the slightest reason for a change of boundary. Above the towns of Perrysburg and Maumee, it is of no more use for the purposes of navigation than if it were not in existence; and the Wabash and Erie canal, which it is expected will run near it, is to terminate at the town of Maumee, two or three miles within the present limits of Ohio; and the people there, who have the best opportunity of judging correctly, will admit that it would not be taken north of that point, if the State of Ohio should include the whole Michigan Territory.

The Maumee bay is of the utmost importance to the prosperity of Michigan. It is the only harbor possessed by that Territory on the coast of Lake Erie, while the whole lake coast of the State of Ohio is studded with harbors, which have been improved by the General Government, at the cost of hundreds of thousands of dollars.

These considerations are believed fully sufficient to prevent a change of boundary in this instance, even on the ground of expediency alone, and if there were no laws to be interfered with. On referring to the proceedings, and gathering as far as possible the intentions of the parties to the compact under which the territory northwest of the river Ohio was divided into States, a leading object in that division seems to have been to give to all the States there formed, as near as practicable, equal advantages, in order that, in the language of the preamble to the resolution of Congress of 7th July, 1786, "they may become a speedy and sure accession of strength to the confederacy."

Under that division, however, and within the limits there established, the State of Ohio, in the short period of thirty-two years, has grown from a condition of utter helplessness, to be one of the most proud, populous, and powerful States in the Union, while the Territory of Michigan, during almost the whole of the same period, with a destiny intended to be equally high, has been kept in a state of degrading dependence; and during more than half that time, without even a voice to raise, in the Halls of Congress, against the encroachment of her powerful southern neighbors, who have lost no opportunity to enlarge their own territory, at the expense of lessening hers.

Under these circumstances, Michigan, weak and helpless as she is, has a right to appeal to the Congress of the United States, the natural and proper guardian of her rights and interests, not only to resist all attempts at further encroachment, but also to restore to her all the territory so solemnly guaranteed to her by that irrevocable law under which she expects soon to take an humble but honorable stand among the States of the Union.

Such an appeal she, therefore, now most solemnly and earnestly makes, in the full confidence and belief that in all the legislation of Congress touching her boundaries, her rights and interests will be duly regarded.

I have the honor to be, sir,

Most respectfully,

Your obedient servant,

LUCIUS LYON.

WASHINGTON, January, 1834.

Extract from the message of Governor Cass to the Legislative Council of Michigan Territory, at the opening of their session, January 5, 1831.

An effort has been made to detach the counties of Michilimackinac and Chippewa from the Peninsular Territory, and to annex them to the new Government, which is asked for west of Lake Michigan. Such a measure would be equally injurious to our rights, and subversive of our interests. The act of Congress of January 11, 1805, establishing this Territory, defined its boundaries, and guaranteed to the inhabitants then living, or who might thereafter live, within them, many political rights, dear to the American people, and without the enjoyment of which our citizens would never encounter the difficulties and hardships incident to the settlement of a new country. Among these, not the least important is the right of admission into the Union when our population shall equal the number prescribed in the ordinance of Congress of July 13, 1787, which laid the foundation of the Governments of the States and Territories northwest of the Ohio river. If we have any security for the political privileges we enjoy, or expect to enjoy, we have the same security, and that is, the faith of the United States, for the integrity of the territorial boundaries established by that act. A line drawn through the middle of Lake Michigan to its northern extreme, and thence due north to Lake Superior, which is our western boundary, leaves the inhabited portions of the counties of Michilimackinac and Chippewa in the original Territory of Michigan. To the country west of that line we have no claim. It was not annexed to the Territory until 1818, when Illinois was admitted into the Union, and in the act of annexation the right is expressly reserved of making such future disposition of it as Congress might deem expedient. It was intended as a temporary measure, to be followed by the establishment of a local Government when circumstances should require it. If these two counties can be separated from us, so may either of the peninsular counties; and our whole country may be thus subdivided, and our admission into the Union indefinitely postponed. I submit for your consideration whether a renewed expression of your own views, and of the expectations of your constituents, upon this subject, would not be expedient; and whether, in the even of an immediate decision adverse to our interest and expectations, such a measure would not be an important proceeding hereafter to refer to when a change in our political relations may enable us again to bring forward this question under more favorable circumstances. For it is impossible this community should acquiesce in such a dismemberment of their territory, without using all the means in their power, now and hereafter, to present the facts and considerations upon which we rely, to the General Government, and to urge the recognition of our rights.

While an effort is making or contemplated to sever from us that part of our northwestern frontier which commands the communication between the three upper lakes, the States which adjoin us upon our southern boundary have preferred claims to portions of the Territory, which, if finally established, will still further reduce our extent and future importance. Indiana asserts and exercises jurisdiction over a tract of country ten miles north of our southern boundary, as defined in that irrevocable law which gave and guarantees to us our political existence, and extending from Lake Michigan east, along the whole northern frontier of that State. That this claim will eventually be contested on the part of this Territory, or of the

State which must soon be established here, there is no doubt. And as we have every confidence in the justice of our cause, we may reasonably look forward to a favorable decision. As, however, the rights of the parties rest upon conflicting acts of Congress, and as Indiana has possession of the tract in question, a prudent regard to circumstances will probably dictate a postponement of the subject until we shall be admitted to a participation in the councils of the tribunal by which it must be determined.

But the claim of Ohio to that part of this territory lying between a line drawn due east from the southerly bend of Lake Michigan, and a line drawn from the same point to the north cape of the Maumee bay, presents considerations of a different nature. The possession of this tract of country, and the jurisdiction over it, are in this Territory, and all the acts of the General Government in relation to the subject, from the ordinance of Congress of July 13, 1787, are uniformly favorable to the establishment of the existing boundary. Ohio seeks a change upon principles which may be as well met now as hereafter; and as the matter has been recently submitted by the Governor of that State to the consideration of the Legislature, it is probable that some legislative measures may be adopted, having in view an examination of the question, and a decision favorable to the claim they have advanced. In this state of things, I suggest the propriety of a memorial being presented to Congress, which shall state distinctly the rights of this Territory, and the sentiments and feelings of its inhabitants upon the subject. Unless I am greatly deceived in my views, a succinct statement of our claim is all that is necessary to ensure its confirmation.

I lay before you copies of two letters written in 1820 by Mr. Woodbridge, then acting Governor and Secretary of this Territory, one addressed to the Governor of Ohio, and the other to the Secretary of State of the United States. These letters contain a very able exposition of our case, and appear to me, as well in the course of the discussion, as in the conclusions they draw, to be unanswerable. As the subject, however, is very important to the future interests of the Territory, I may be excused for presenting a brief summary of the view which I have taken of it.

It is not necessary, at present, to enter into a consideration of the question whether, under the original ordinance, Congress could change the fundamental line running east and west from the southern extreme of Lake Michigan. It will be time for us to contest this point when that change is made. We may yet safely rely upon the legislative acts of the Government which originally established the boundary line between this Territory and the State of Ohio, and have since recognised and confirmed it.

By the act of Congress of April 30, 1802, authorizing the people of the eastern division of the Northwestern Territory to form a constitution and State Government, it was provided that the northern boundary of the proposed State should be a line running due east from the southern extreme of Lake Michigan, after intersecting a line running north from the mouth of the Great Miami. And all the country north of that line was, for the purpose of temporary Government, attached to the Territory of Indiana. The convention of Ohio, in defining the boundaries of the State, followed the words of the act of Congress, and then added the following proviso: "*Provided, always, and it is hereby fully understood and declared by this convention, That if the southerly bend, or extreme of Lake Michigan should extend so far south that a line drawn due east from it should not intersect Lake Erie, or if it should intersect the said Lake Erie east of the mouth*

of the Miami river, then, in that case, with the assent of the Congress of the United States, the northern boundary of this State shall be established by, and extend to, a direct line, running from the southern extremity of Lake Michigan to the most northerly cape of the Miami bay, after intersecting the due north line from the mouth of the Great Miami, as aforesaid; thence, northeast, to the territorial line, and, by the said territorial line, to the Pennsylvania line." The constitution proposing this modification was submitted to Congress, and referred, on the 23d of December, 1802, in the House of Representatives, to a committee, of which Mr. Randolph was chairman. This committee reported, on the 2d of February following, that, with respect to the change proposed by Ohio in her northern boundary, "as the suggested alteration was not submitted in the shape of a distinct proposition, by any competent authority, for approval or disapproval, it was not necessary or expedient for Congress to act on it at all."

On the 19th of February an act was passed, extending the laws of the United States over the State of Ohio, and the preamble to this act declares that the people of the eastern division of the Northwestern Territory had formed a constitution and State Government, *in pursuance* of the act of Congress before referred to, authorizing such State Government to be formed. And on the 3d of March, 1803, another act was passed, assenting to certain propositions made by Ohio; but in neither of these acts is any notice taken of the proposed change in the boundary.

The Territory of Michigan was established by the act of Congress of January 11, 1805, and its southern boundary was declared to be a line drawn due east from the southern extreme of Lake Michigan to Lake Erie. And by another act, passed May 20, 1812, the Surveyor General was authorized to cause to be run, under the direction of the President, so much of the northern and western boundaries of Ohio, which had not already been ascertained, and as divided said State from the Territories of Indiana and Michigan, *agreeably to the boundaries as established* by the act entitled "An act to enable the people of the eastern division of the territory northwest of the river Ohio to frame a constitution and State Government, and for the admission of such State into the Union on an equal footing with the original States, and for other purposes," "and to cause to be made a plat or plan of so much of the boundary line as runs *from the southerly extreme of Lake Michigan to Lake Erie,*" &c.

The events of the war upon this frontier prevented the execution of the duties enjoined by this act; but on the 16th of April, 1816, another appropriation was made for carrying it into effect, and, under the directions of the President, the line was run, in conformity with the various acts of Congress, from the southerly extreme of Lake Michigan to Lake Erie.

This is the history of the legislation concerning this subject, and it brings the question of right within a narrow compass. The State of Ohio, to support her claim, must contend either that she had the power to enlarge her own territory, or that Congress has assented to the proposition submitted for that purpose. The former ground has not been taken; and, with respect to the latter, it is certain that the United States have passed no act giving their consent to the change asked for. In fact, the claim of Ohio, as advanced and advocated, rests solely upon the presumption that as Congress did not act upon the subject of her proposition to change the northern boundary when she was admitted into the Union, such admission is a virtual assent to that measure, and gives her complete jurisdiction:

over the tract demanded. That I am correct in this view of the case, will be seen by the accompanying extract of a letter from the Governor of Ohio to Mr. Woodbridge.

Even were there no cotemporaneous or subsequent proceedings on the part of Congress by which their intentions could be ascertained, it is difficult to conceive how the performance of a necessary and independent duty, that of admitting the State into the Union, can be considered as an assent to a proposition totally distinct from this measure. For whether the boundary were north or south of the Maumee, Ohio had an equal right to join the national councils; nor was the determination of this question at all essential to her rights or sovereignty; nor in the slightest manner connected with her entrance into the confederacy. Other propositions submitted by Ohio at the same time were considered and accepted, and an act passed by Congress to give effect to them. But the circumstances of the case admit of no presumption. The very act of admission, already quoted, proves the right of Ohio to enter the Union upon the foundation of the act which prescribed her boundaries. The committee expressly state that it is not expedient for Congress to act upon the subject. Two years afterwards, this Territory was established, and the same fundamental line was prescribed as its southern boundary. After another interval of seven years, Congress again recognised this line, and directed its survey. Four years later, and an appropriation was made to effect this object. The Executive caused this law to be carried into effect, and the line, as now existing, to be run in the year 1818, two years after the passage of this last mentioned act. I need add nothing to this series of congressional measures, indicating, in the most satisfactory manner, the determination of the General Government not to assent to the change in the boundary proposed by Ohio. As a question of expediency, there is certainly no reason why the neighboring States should be increased at the expense of this Territory; and should the subject be brought in this form before Congress, we may safely rely for our security upon the very obvious considerations, both political and geographical, which will present themselves.

DETROIT, M. T. *August 11, 1820.*

SIR: In the temporary absence of Governor Cass, it has devolved upon me, as Secretary of Michigan, to perform the Executive functions of this Government; and I have the honor in that capacity to solicit your Excellency's attention to the subject of the collision of authority which unfortunately exists between the State of Ohio and this Territory, as it affects the people who live between the line running due east from the south extreme of Lake Michigan, and that which is claimed from the north cape of Miami bay, in a direction towards the same point.

It is understood that a new county has recently been organized by the authority of Ohio, comprehending the disputed country; that proceedings have been instituted there to levy taxes; and that every indication exists of a determination to enforce, contrary to the wishes of the people and to the interests of this Territory, the claimed jurisdiction of Ohio.

In this exigency my official interposition has been claimed; and painful as it may be to me, individually, to oppose myself to the views of Ohio, the State of my early adoption, it is yet with much satisfaction that it is

to you, sir, from whom I have so much of candor to expect, that I feel called upon to submit briefly my views of this interesting matter.

The claim of sovereignty over the district of country in question, which Ohio prefers, rests, I understand, upon the alleged acceptance by the General Government of the constitution of Ohio; in which constitution is a clause providing that in a certain event, with the assent of Congress, the northern boundary of that State shall be as is now claimed by Ohio.

If such statement of the case be true, and if it were competent for the General Government, "with the assent of Congress," to alter the previously established boundary, it may nevertheless be submitted to your Excellency whether any other deduction be fairly inferrible from the premises, than that the General Government agreed with the people of Ohio that, if Congress should thereafter assent to it, the boundary in question might, at a time then future, be altered in the manner suggested by the framers of that constitution; and leaving it still for Congress to act specifically upon such a proposition when it should thereafter be presented to them.

The strongest aspect in which the question can be fairly presented by those who would favor the pretensions of Ohio, is one in which Congress may be supposed, by adopting the constitution, themselves to speak the language of it. What then may they be supposed to say, other than this, that we (the General Government) agree that in a certain event the boundary line in question may be altered, provided Congress shall agree to such alteration whenever afterward such proposition shall be made. Such a deduction from the premises assumed, I beg leave to suggest as the true one. But there are other considerations, and of a more general nature, and which would not be deemed the less applicable if the alteration contended for had rested on words of positive import. The framers of that constitution were certainly incompetent to make any positive alteration in the boundaries previously defined. The act of Congress of the 30th April, 1802, which was the substratum of all their authority—which alone sustained the political fabric which they erected, expressly circumscribed them. In whatsoever respect they may have transcended their powers, in so far their acts must have been merely void. Nor could it have required an affirmative act of Congress to make them more so. Is it fair, then, to presume from the absolute silence of Congress concerning this subject, (whether the proposed alteration were, in its terms, absolute or merely conditional,) that therefore they assented to the specific alteration, thus without previous authority exhibited in this fundamental law of the State? Had that constitution contained any other absurd or void proposition, as, for example, had it proposed to extend the sovereign power of the State so far as to comprehend a part of Maine or Virginia, would such void act have acquired validity upon the admission of the State, because Congress should not have taken notice of such void proposition?

It will not have escaped the observation of your Excellency, that Congress have not, by any positive legislative act, expressly avowed their assent to any part of the constitution of Ohio. Can such assent then be inferrible in regard to any proposition contained in it, except in regard to such as, by the constitution of the United States, it is imperatively made the duty of Congress to act upon, upon the admission into the Union of any new State? It may be conceded that, upon a view of the leading features of that constitution, Congress have assented to the proposition that

the Government of Ohio is republican, but that the rest of the principles contained in it, not requiring the sanction of Congress, must rest for their validity upon their own intrinsic and respective merits; otherwise, all responsibility for their moral and political correctness becomes shifted from the people of Ohio; the whole instrument becomes the act of Congress, and consequently cannot be altered but by the assent of that body—a result which I feel confident your Excellency would reject.

It is made, by the constitution of the United States, the duty of Congress to guaranty to every new State a republican form of Government. With a particular reference to this topic, I would admit the legal inference from the transaction to be, that Congress examined and were satisfied with the form of Government adopted; they assented to it. But what legal necessity was imposed upon that body to examine further; to travel through all its detailed provisions—dissenting from what they did not approve, judicially declaring null that which of itself had no validity, and approving and giving validity to that they might think morally and politically correct? And if no such legal necessity existed for the act, why is such examination and assent presumed?

A reference to the proceedings of Congress, however, will show that the particular provision in the constitution of Ohio, to which allusion is made, did not pass totally unobserved. The constitution of Ohio was referred to a very respectable committee of the House of Representatives. That committee made a long report upon it, which, so far as it regarded the suggested contingent alteration of boundaries, was accepted by that body, and the sentiment contained in the report, and so accepted, was, that as the suggested alteration was not submitted in the shape of a distinct proposition, by any competent authority, for approval or disapproval, it was not necessary or expedient for Congress then to act upon it at all; thus expressly excluding the inference contended for by the authorities of Ohio. (See report of Com. 2d Sess. 7th Cong. page 327—346.)

And I beg leave further to solicit your Excellency's attention to the important fact that the claim set up by Ohio is opposed by one uniform course of congressional legislation, commencing with the ordinance of 1787, and extending to a period long subsequent to the admission of the State of Ohio.

The ordinance of Congress evidently contemplates a line due east from the south extreme of Lake Michigan, as the true and immutable boundary of the State, to be formed in the eastern division of the Northwestern Territory. The act of 1802 expressly establishes that as the boundary, and the act of 1805, which was passed about two years after the admission of Ohio, expressly gives to this Territory (then created) the same line as its southern boundary in that direction. The act of 1812 again recognises the same line.

But were the claim of Michigan, for the reasons stated, less unequivocal, I should still feel obliged to propound to your Excellency the question, whether in reality it were competent for the General Government, without the assent of all parties in interest, to alter the boundary first contemplated by the ordinance of 1787.

In regard to the old Northwestern Territory, the United States voluntarily placed herself in the relation of a grantee under Virginia. Virginia in her cession deemed it expedient to annex conditions to her grant. The General Government necessarily and voluntarily took according to the form of the grant; and not being pleased with all those conditions, submitted her request to Virginia, that those conditions, so far as they related

to the subdivision of the Territory into States, might be altered. Virginia assented to the request, and agreed to the boundaries as contemplated in the fifth of the permanent articles of the ordinance; which fifth article, as well as the sanction provided for its fulfilment, it is considered, became incorporated with, and forms a part of, the original grant. That article, so assented to, leaves it in the discretion of Congress to create more than three States, and, in the event of the election of Congress so to do, contemplates the establishment of the northern boundary of the eastern State to be the same which Michigan has always claimed. By the creation of the States already created, Congress have decided their election, their power in this regard is executed, and that body can no longer be authorized to vary the boundaries proposed in the ordinance, except according to the principles contained in the ordinance itself: i. e. by the common consent of the parties having interest in the subject-matter of the articles of compact. The people of Michigan have never consented to such alteration, and they were excluded from all participation in the formation of the constitution of Ohio. Virginia has never consented to such alteration, yet the contract was made with her: and it is furthermore respectfully urged that Congress have never intended expressly or impliedly to assent to it.

This subject, as your Excellency is doubtless advised, was stirred during the last session of Congress: a resolution recognising the survey actually made of the true boundary line, in pursuance of the provisions of the act of 1812, was submitted to the consideration of one of the most intelligent and respectable of the standing committees of the House of Representatives, of which the honorable Mr. Anderson, of Kentucky, was chairman. That committee reported, it is believed by unanimous consent, in favor of the resolution, and consequently in affirmance of the pretensions of this Territory. Nothing prevented the formal and definitive expression of the opinion of Congress on this topic, during that session, but the absolute want of time to act further upon it.

I have felt it to be my duty to present to your Excellency the view I have been able to take of the relative pretensions of Ohio and of Michigan to the contested jurisdiction; and to call to the recollection of your Excellency that the subject still continues *sub judice*, before the present Congress of the United States: and I now venture, in this exigency, respectfully to request of your Excellency such official and legal interposition on your part as may best tend to restore harmony on that frontier, and to prevent the manifold and rapidly accumulating evils which are growing out of this prolonged and unhappy difference.

With much respect, I have the honor to be,
Your Excellency's most obedient servant,
WILLIAM WOODBRIDGE,

Secretary, and at present Acting Governor of Michigan.

To His Excellency **ETHAN A. BROWN**,
Governor of the State of Ohio.

DETROIT, M. T. August 11, 1820.

SIR: I have the honor to enclose a copy of a letter I this day transmitted to Governor Brown, of Ohio. It relates to the contested boundary of

this Territory. I am advised by the magistrates and others, living on and near this contested tract of country, that serious difficulties are threatened there, from the apparent determination of the constituted authorities of Ohio to enforce their claims; much confusion has already occurred.

The Executive concerns of this Government having devolved upon me, in the absence of Governor Cass, I could not feel justified in resisting the calls of that people for some official interference in their behalf. I have exhorted them to avoid every measure which would lead to a breach of the peace, but, at the same time, in no instance to admit, directly or indirectly, the validity of the claims of Ohio, now for the first time attempted to be enforced.

I have prepared what I consider a just view of the question, for transmission to Governor Brown, and requested his official interposition; further than that I do not know that I am justified in proceeding, but rather at this point to submit the matter to the General Government, where alone plenary power rests. The power of this local Government I consider altogether derivative, and that entire sovereignty rests only in the General Government, whose agent the local authorities in this regard are. There are topics connected with this subject, which I did not think it proper to advert to in my communication to Governor Brown, intending in that communication to confine myself to the mere right of the question. They are topics, I mean, of expediency and national policy. Under the patronage and paternal care of the General Government, Ohio has grown rapidly from the condition of helpless infancy. She has suddenly swollen to the dimensions of a giant; already she reckons among her children more than half a million; her colossal stature overshadows the whole West; yet nearly half her territory remains a wilderness. Is it politic, in a national point of view, then, is it expedient, to increase that disparity which already exists between her and the neighboring States?

Would this be right under any circumstances, but more especially at the expense of this remote, isolated, feeble, and frontier Territory?

If it be desirable that any State rather than another should have the control of powerful and extensive resources, moral and physical, is it not peculiarly so in regard to a State such as this must be, remote from the strength of this nation, cut off from it by an almost impassable morass, and exposed, as it certainly is, to the rapidly increasing political power of the country opposite to us, the most fertile and most beautiful part of Upper Canada, and to the countless hordes of savages in the Northwest? Great as may be considered the commercial and natural advantages of this Territory, the number of emigrants is perhaps comparatively small, who may find in latitudes so high, inducements to settle among us. The limits of the future State of Michigan ought not probably to comprehend any country much beyond the limits of the peninsula of Michigan itself; an acre of country to the south and within those limits, is of more value to us than miles to the north and beyond them.

A considerable part of the country claimed by Ohio is the finest we have; to be deprived of it, would materially affect the period of our admission into the Union, of our participation in the blessings of self-government. Besides the topography of the country would show that such a dismemberment would violate manifest political propriety. The Black swamp forms the natural and proper barrier of Ohio; to the northwest of it she can have but little to interest her, whereas to this Territory the

Miami bay furnishes her only harbor on Lake Erie. The commercial connexions of the people inhabiting its southern shores, the only shores which by reason of the Black swamp are for the present habitable, are and must be with this Territory; their true interests require also that their political connexions should be here.

I hope it may not be considered superfluous in me to submit to you, sir, these extrinsic and collateral observations. Should the General Government feel itself authorized to alter the established boundaries of this Territory in that direction, they may be worthy of consideration. But it is in truth to the General Government that the people of this Territory look for protection and support in the exigency; and it is for that reason, sir, that I felt it my duty to submit to the President, through you, this matter. The ordinance of 1787 requires that communications from the Governors of the Territories shall be made to the President of Congress; the laws which were passed for the purpose of adapting the principles of the Territorial Governments to the altered state of things, induced by the adoption of the present United States constitution, requires such communications to be made to the President. The office of the Secretary of State, I have supposed the proper channel through which such communications should be made; and I hope that nothing will be found in the matter or manner of this procedure which may render it obnoxious to the charge of indecorum.

I have the honor to be,

Sir, with perfect respect,

Your obedient servant,

WILLIAM WOODBRIDGE,

Secretary, and at present Acting Governor of Michigan.

To the Hon. JOHN QUINCY ADAMS,

Secretary of State.

Extract from a letter from his Excellency Gov. Ethan A. Brown, of Ohio, to the Hon. William Woodbridge, Secretary of Michigan Territory, dated Columbus, Sept. 20, 1820, referred to in the message of Governor Cass.

"The preamble to the resolution last winter passed by our Legislature, explains the ground on which the General Assembly of Ohio thought proper at that time to place their right to the jurisdiction to which this State has believed herself entitled ever since her admission into the Federal Union; a jurisdiction which the Government of Michigan have thought it their duty and interest to dispute. It is needless to recite it, as it will probably be fresh in your recollection: you will perceive the relation between that document and these observations, without further direct reference to it.

"In deciding upon the final acceptance and ratification of the terms of the constitution, Congress did not reject the explanatory stipulation; the constitution in its present form was adopted by that body, and, on behalf of Ohio, it is contended they assented that the jurisdiction of this State should extend over the Territory in question."

A bill to provide for taking a census or enumeration of the inhabitants of the eastern division of the Territory of Michigan and of the Territory of Arkansas.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the marshals of the eastern division of the Territory of Michigan and of the Territory of Arkansas, respectively, shall be, and are hereby, required, under the direction of the Secretary of the Department of State, and according to such instructions as he shall give, pursuant to this act, to cause the number of the inhabitants within their respective Territories as aforesaid, (omitting, in such enumeration, Indians not taxed,) to be taken according to the directions of this act. The said enumeration shall distinguish the sexes of all free white persons, and ages of the free white males and females, respectively, under five years of age : those of five and under ten years of age ; those of ten years and under fifteen ; those of fifteen and under twenty ; those of twenty and under thirty ; those of thirty and under forty ; those of forty and under fifty ; those of fifty and under sixty ; those of sixty and under seventy ; those of seventy and under eighty ; those of eighty and under ninety ; those of ninety and under one hundred ; those of one hundred and upwards. The said enumeration shall also distinguish the sexes of all slaves and of all free colored persons, respectively, of each sex under ten years of age ; those of ten and under twenty-four ; those of twenty-four and under thirty-six ; those of thirty-six and under fifty-five ; those of fifty-five and under one hundred ; and those of one hundred and upwards. For effecting which, the marshals aforesaid shall have power, and are hereby required to appoint one or more assistants in each city and county in their respective Territories, residents of such city or county for which they shall be appointed, and shall assign to each of the said assistants a certain division of territory, which division shall not consist, in any case, of more than one county, but may include one or more towns, townships, wards, hundreds, precincts, or parishes, and shall be plainly and distinctly bounded. The said enumeration shall be made by an actual inquiry by such marshals or assistants at every dwelling-house, or by personal inquiry of the head of every family. The marshals and their assistants shall, respectively, before entering on the performance of their duty under this act, take and subscribe an oath or affirmation before some judge or justice of the peace resident within their respective Territories, for the faithful performance of their duty ; the oath or affirmation of the marshal shall be as follows : “ I, A B, marshal of the Territory of —, do solemnly swear (or affirm) that I will truly and faithfully cause to be made a full and perfect enumeration and description of all persons resident within my Territory, and return the same to the Secretary of State, agreeably to the directions of an act of Congress entitled ‘ An act to provide for taking a census or enumeration of the inhabitants of the eastern division of the Territory of Michigan and of the Territory of Arkansas,’ according to the best of my ability.” The oath or affirmation of an assistant shall be as follows : “ I, A B, appointed an assistant to the marshal of the Territory of —, do solemnly swear (or affirm) that I will make a just, faithful, and perfect enumeration and description of all persons resident within the division assigned to me for that purpose by the marshal of the Territory of —, and make due return thereof to the said marshal,

agreeably to the directions of an act of Congress entitled 'An act to provide for taking a census or enumeration of the inhabitants of the eastern division of the Territory of Michigan and of the Territory of Arkansas,' according to the best of my ability, and that I will take the said enumeration and description by actual inquiry at every dwelling-house within said division, or personal inquiry of the head of every family, and not otherwise." The enumeration shall commence on the first day of June, in the year one thousand eight hundred and thirty-four, and shall be completed and closed within six calendar months thereafter. The several assistants shall, within the said six months, and on or before the first day of December, eighteen hundred and thirty-four, deliver to the marshals by whom they shall have been appointed, respectively, two copies of the accurate returns of all persons, except Indians not taxed, to be enumerated as aforesaid, within their respective divisions; which returns shall be made in a schedule, the form of which is annexed to this act, and which shall distinguish in each county, city, town, township, ward, precinct, hundred, district, or parish, according to the civil divisions of the Territories, respectively, the several families by the name of their master, mistress, steward, overseer, or other principal persons therein.

SEC. 2. *And be it further enacted,* That every assistant, failing or neglecting to make a proper return, or making a false return of the enumeration to the marshal within the time limited by this act, shall forfeit the sum of two hundred dollars, recoverable in the manner pointed out in the next section of this act.

SEC. 3. *And be it further enacted,* That the marshals shall file one copy of each of the several returns aforesaid, and also an attested copy of the aggregate amount hereinafter directed to be transmitted by them, respectively, to the Secretary of State, with the clerks of their respective courts, as the case may be, who are hereby directed to receive and carefully to preserve the same; and the marshals, respectively, shall, on or before the first of January, in the year one thousand eight hundred and thirty-five, transmit to the Secretary of State one copy of the several returns received from each assistant, and also the aggregate amount of each description of persons within their respective Territories. And every marshal failing to file the returns of his assistants, or the returns of any of them, with the clerks of the respective courts as aforesaid, or failing to return one copy of the several returns received from each assistant, and also the aggregate amount of each description of persons in their respective Territories, as required by this act, and as the same shall appear from said returns, to the Secretary of State, within the time limited by this act, shall, for every such offence, forfeit the sum of ——— thousand dollars; which forfeiture shall be recoverable in the courts of the Territories where the said offences shall be committed, by action of debt, information, or indictment, the one-half thereof to the use of the United States, and the other half to the informer; but when the prosecution shall be first instituted on behalf of the United States, the whole shall accrue to their use; and for the more effectual discovery of such offences, the judges of ———, in the said Territories, at their next session to be held after the expiration of the time allowed for making the returns of the enumeration hereby directed to the Secretary of State, shall give this act in charge to the grand juries in their respective courts, and shall cause the returns of the several assistants, and the said attested copy of the aggregate amount, to be laid before them

for their inspection; and the respective clerks of the said courts shall, within thirty days after the said original returns shall have been laid before the grand juries aforesaid, transmit and deliver all such original returns so filed to the Department of State.

SEC. 4. *And be it further enacted,* That every assistant shall receive at the rate of one dollar and twenty-five cents for every hundred persons by him returned, where such persons reside in the country; and where such persons reside in a city or town containing more than three thousand persons, such assistant shall receive at the same rate for three thousand, and at the rate of one dollar and twenty-five cents for every three hundred persons over three thousand residing in such city or town; but where, from the dispersed situation of the inhabitants in some divisions, one dollar and twenty-five cents will not be sufficient for one hundred persons, the marshals, with the approbation of the judges of their respective Territories, may make such further allowance to the assistants in such divisions as shall be deemed an adequate compensation: *Provided,* The same does not exceed one dollar and seventy-five cents for every fifty persons by them returned: *Provided, further,* That, before any assistant as aforesaid shall be entitled to receive said compensation, he shall take and subscribe the following oath or affirmation before some judge or justice of the peace authorized to administer the same, to wit: "I, A. B., do solemnly swear (or affirm) that the number of persons set forth in the return made by me agreeably to the provisions of the act entitled 'An act to provide for taking a census or enumeration of the inhabitants of the eastern division of the Territory of Michigan and of the Territory of Arkansas,' have been ascertained by an actual inquiry at every dwelling-house, or a personal inquiry of the head of every family, in exact conformity with the provisions of said act; and that I have in every respect fulfilled the duties required of me by said act, to the best of my abilities, and that the return aforesaid is correct and true, according to the best of my knowledge and belief." The compensation of the marshal of the eastern division of the Territory of Michigan shall be one hundred and fifty dollars, and that of the marshal of the Territory of Arkansas shall be one hundred and fifty dollars.

SEC. 5. *And be it further enacted,* That every person whose usual place of abode shall be in any family on the said first day of June, one thousand eight hundred and thirty-four, shall be returned as of such family; and the name of every person who shall be an inhabitant of either of the Territories aforesaid, without a settled place of residence, shall be inserted in the column of the schedule which is allotted for the heads of families in the division where he or she shall be on the said first day of June, and every person occasionally absent at the time of enumeration as belonging to the place in which he or she usually resides in the said Territories.

SEC. 6. *And be it further enacted,* That each and every free person more than sixteen years of age, whether heads of families or not, belonging to any family within any division, district, or territory, made or established within the said Territories, shall be, and hereby is, obliged to render to the assistant of the division, if required, a true account, to the best of his or her knowledge, of every person belonging to such family, respectively, according to the several descriptions aforesaid, on pain of forfeiting twenty dollars, to be sued for and recovered in any action of debt by such assistant, the one-half to his own use, and the other half to the use of the United States.

SEC. 7. *And be it further enacted.* That each and every assistant, previous to making his return to the marshal, shall cause a correct copy, signed by himself, of the schedule containing the number of inhabitants within his division, to be set up at two of the most public places within the same, there to remain for the inspection of all concerned ; for each of which copies the said assistant shall be entitled to receive five dollars : *Provided,* Proof of the schedule having been set up shall be transmitted to the marshal with the return of the number of persons ; and in case any assistant shall fail to make such proof to the marshal, with the return of the number of persons as aforesaid, he shall forfeit the compensation allowed him by this act.

SEC. 8. *And be it further enacted,* That the Secretary of State shall be, and hereby is, authorized and required to transmit to the marshals of the Territories aforesaid, regulations and instructions pursuant to this act, for carrying the same into effect, and also the forms contained therein of the schedule to be returned, and such other forms as may be necessary in carrying this act into execution, and proper interrogatories to be administered by the several persons to be employed in taking the enumeration.

SEC. 9. *And be it further enacted,* That, in all cases where the superficial content of any county or parish shall exceed twenty miles square, and the number of inhabitants in said parish or county shall not exceed three thousand, the marshals or assistants shall be allowed, with the approbation of the judges of the respective Territories, such further compensation as shall be deemed reasonable : *Provided,* The same does not exceed four dollars for every fifty persons by them returned ; and when any such county or parish shall exceed forty miles square, and the number of inhabitants in the same shall not exceed three thousand, a like allowance shall be made, not to exceed six dollars for every fifty persons so returned.

SEC. 10. *And be it further enacted,* That, when the aforesaid enumeration shall be completed and returned to the office of the Secretary of State by the marshals of the Territories, he shall direct the printers to Congress to print, for the use of Congress, ——— copies of the aggregate returns received from the marshals : *And provided,* That, if the marshals in either of the said Territories shall directly or indirectly ask, demand, or receive, or contract to receive, of any assistants to be appointed by him under this act, any fee, reward, or compensation, for the appointment of such assistant to discharge the duties required of such assistant under this act, or shall retain from such assistant any portion of the compensation allowed to the assistant by this act, the said marshal shall be deemed guilty of a misdemeanor in office, and shall forfeit and pay the amount of five hundred dollars for each offence, to be recovered by suit or indictment in any court of the said Territory, one-half to the use of the Government, and the other half to the informer ; and all contracts which may be made in violation of this law shall be void, and all sums of money or property paid may be recovered back by the party paying the same in any court having jurisdiction of the same.

SEC. 11. *And be it further enacted,* That there shall be allowed and paid to the marshals of the said Territories the amount of postage by them respectively paid on letters relating to their duties under this act.

SEC. 12. *And be it further enacted,* That the eastern division of the Territory of Michigan shall include what is commonly called the peninsula of Michigan, and shall be bounded as follows, that is to say : on the north

and east by the boundary line between the United States and Canada ; on the south by Ohio and Indiana ; and on the west by a line drawn through the middle of Lake Michigan to its junction with Lake Huron, and thence eastwardly, in said lake, to the nearest point in the boundary line between the United States and Canada : *Provided*, That nothing contained in the provisions of this section shall be construed to affect any question of boundary now existing, or which may hereafter exist, between the said eastern division of the Territory of Michigan and the foregoing States.

Schedule of the whole number of persons within the division allotted to A B, by the marshal of

Total.		
FREE COLORED PERSONS.	Females.	Of one hundred and upwards. Of fifty-five and under one hundred. Of thirty-six and under fifty-five. Of twenty-four and under thirty-six. Of ten and under twenty-four. Under ten years of age.
	Males.	Of one hundred and upwards. Of fifty-five and under one hundred. Of thirty-six and under fifty-five. Of twenty-four and under thirty-six. Of ten and under twenty-four. Under ten years of age.
SLAVES.	Females.	Of one hundred and upwards. Of fifty-five and under one hundred. Of thirty-six and under fifty-five. Of twenty-four and under thirty-six. Of ten and under twenty-four. Under ten years of age.
	Males.	Of one hundred and upwards. Of fifty-five and under one hundred. Of thirty-six and under fifty-five. Of twenty-four and under thirty-six. Of ten and under twenty-four. Under ten years of age.
FREE WHITE PERSONS, (including heads of families.)	Females.	Of one hundred and upwards. Of ninety and under one hundred. Of eighty and under ninety. Of seventy and under eighty. Of sixty and under seventy. Of fifty and under sixty. Of forty and under fifty. Of thirty and under forty. Of twenty and under thirty. Of fifteen and under twenty. Of ten and under fifteen. Of five and under ten. Under five years of age.
	Males.	Of one hundred and upwards. Of ninety and under one hundred. Of eighty and under ninety. Of seventy and under eighty. Of sixty and under seventy. Of fifty and under sixty. Of forty and under fifty. Of thirty and under forty. Of twenty and under thirty. Of fifteen and under twenty. Of ten and under fifteen. Of five and under ten. Under five years of age.
Names of heads of families.		
Name of county, city, ward, town, township, parish, precinct, hundred, or district.		

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